MISSOURI LAW ENFORCEMENT

JUVENILE JUSTICE GUIDELINES AND RECOMMENDED PRACTICES

July 2008

Revised February 2009

MISSOURI JUVENILE JUSTICE ASSOCIATION
Promoting justice for children, youth, and families

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This manual has been developed with funding provided by the Juvenile Justice Advisory Group, through the Missouri Department of Public Safety and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

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MISSOURI LAW ENFORCEMENT – JUVENILE JUSTICE GUIDELINES AND RECOMMENDED PRACTICES should not be interpreted as legal advice or a substitute for the advice of an attorney.

The information contained herein is general and intended to communicate recommended practices and procedures. It is not intended to be exhaustive or to subvert any supervisory directive, statute, Supreme Court Rule or local court rule.

Since your local Juvenile or Family Court may have additional and more specific procedures and protocols not included in this manual, clarification as to local court requirements should be obtained by contacting the appropriate representative of your local Juvenile or Family Court.

Efforts were made to ensure the accuracy of the information contained herein but as the law is ever changing, attention to statutory and case law updates may be required.

July 2008

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Introduction

Missouri Law Enforcement personnel play a vital role in the juvenile justice process and often open the "doorway" to the juvenile system for a young person alleged to have committed an act of juvenile misbehavior or delinquent conduct. Law Enforcement personnel also have the weighty responsibility of intervening on behalf of children subjected to abuse or neglect as part of their duty to protect and serve. The ***Missouri Law Enforcement – Juvenile Justice Guidelines and Recommended Practices*** manual is designed to serve as a handbook for Law Enforcement personnel as they respond to the those unique and often complex issues of juvenile justice and the welfare of children.

The purpose of this manual is to promote an understanding of the differing legal requirements and philosophical tenets that exist between the juvenile and adult court systems while offering practical guidelines and defining best practices to aid Law Enforcement personnel in the performance of their duties.

The manual is comprised of chapters, each of which includes specific guidance for addressing issues concerning law enforcement contact with juveniles. You will find definitions relating to the topic, references to relevant statutes, rules and case law, and the roles and legal requirements for law enforcement personnel. Located at the end of each chapter are the recommended forms that are referenced throughout the text.

General Definitions

Adult – any person seventeen years of age or older (defines age of criminal responsibility). See Section 211.021(1) RSMo.

Certification – the process of transferring a child from the jurisdiction of the juvenile court of general jurisdiction (adult court) for prosecution and sentencing under the general law. See Section 211.071 RSMo.

Child (status offenses and delinquent offenses) – a "child" means a person under seventeen years of age. *See* Section 211.021(2) RSMo.

Child (child abuse and neglect) – a "child" is any person, regardless of physical or mental condition, under eighteen (18) years of age. *See* Section 210.110(3) RSMo.

County – any county of the state and the City of St. Louis. See Rule 110.05(a)(3).

Court – a juvenile division of the circuit court or a division of the family court when hearing matters that would be heard in the juvenile division of the circuit court. *See* Rule 110.05(a)(4)

Custodian – includes parent, guardian of the person and any person having legal or actual custody of a juvenile. *See* Rule 110.05(a)(5).

Detention – the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under subdivision (2)(status offenses) or (3)(delinquent offenses) of subsection 1 of Section 211.031 RSMo. *See* Rule 110.05(a)(6).

Detention Facility – a place of temporary care for juveniles in judicial custody in connection with proceedings under subdivision (2)(status offenses) or (3)(delinquent offenses) of subsection 1 of Section 211.031 RSMo. and includes facilities that are physically confining but does not include a jail or other adult detention facility unless the juvenile is age seventeen years or older. See Rule 110.05(a)(7).

Hearsay – a statement made by someone other than the person testifying at trial or hearing being offered in evidence to prove the truth of the matter asserted. *See* BLACK'S LAW DICTIONARY 739 (8th ed. 2004).

Hearsay exception – a deviation of the hearsay rule, which allows the inadmissible statement into evidence because circumstances surrounding the statement suggest it is reliable. *See* BLACK'S LAW DICTIONARY 739 (8th ed. 2004).

Jail – the term "jail or other adult detention facility" means any locked facility administered by state, county or local law enforcement and correctional agencies, a primary purpose of which is to detain adults charged with violating a criminal law pending trial, including facilities of a temporary nature which do not hold persons after they have been formally charged, or to confine adults convicted of an offense. The term "jail or other adult detention facility" does not include a juvenile detention facility. *See* 211.151.4 (1) RSMo.

Judicial Custody – the taking or retention of custody of the person of a juvenile in either protective custody or detention. *See* Rule 110.05(a)(10).

Jurisdiction – the power and authority of a court to hear and determine a judicial proceeding based on the geographic area in which the court has power and with respect to the subject matter in question. *See* BLACK'S LAW DICTIONARY 853 (6th ed. 1990).

Juvenile (Status and Delinquent Offenses/Child Abuse and Neglect) – a "juvenile" means a person under twenty-one years of age who is subject to the jurisdiction of the court. *See* Rule 110.05(a)(12).

Juvenile Delinquency – the term "juvenile delinquency" generally refers to the commission of act(s) by a minor child that would be crimes if those same acts had been committed by an adult. *See* BLACK'S LAW DICTIONARY 428 (6th ed. 1990).

Juvenile Division – includes the Juvenile Court or Family Court.

Juvenile Officer – includes Deputy Juvenile Officer and other court personnel the court has authorized to exercise the powers of the Juvenile Officer. *See* Rule 110.05(a)(15).

Legal Custody – the right to the care, custody and control of a juvenile and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline to a juvenile. *See* Rule 110.05(a)(16).

Parent – either the natural parent or a parent by adoption, whose parental rights have not been terminated. *See* Rule 110.05(a)(18).

Protective Custody – the taking and retention of the person of a juvenile in judicial custody in connection with proceedings under subdivision (1)(child abuse or neglect) of subsection 1 of Section 211.031 RSMo. *See* Rule 110.05(a)(22).

Status Offense – an act committed by a child that would not be considered a crime if committed by an adult but that subjects the child to juvenile or family court jurisdiction. Those acts include: truancy, beyond parental control, runaway and behavior and associations injurious to the welfare and other acts that are applicable only to children. *See* Section 211.031(2) RSMo.

Chapter I – The Missouri Juvenile Justice System

Components of the System

Law Enforcement – Law Enforcement serves as the primary investigator of any criminal conduct or delinquent behavior by a juvenile. Law enforcement serves as the initial contact and primary investigator of any reported incidents involving juvenile status offenders. A Law Enforcement Officer may take a juvenile into temporary protective custody when there is reasonable cause to believe that the juvenile is in imminent danger of suffering serious physical harm or threat to life as a result of abuse or neglect AND has reasonable cause to believe that harm or threat to life may occur before a court could issue a protective custody order or before the Juvenile Officer or designee could take temporary protective custody of the juvenile.

Juvenile Office – Each of the 45 circuits operates its own juvenile office. Most of the time the head of the office is referred to as the "Juvenile Officer" or "Chief Juvenile Officer", and the other workers are the "Deputy Juvenile Officers". However, in some circuits, the person in charge is called the "Chief Deputy Juvenile Officer" or "Juvenile Court Administrator". Regardless of the title, the Juvenile Officer has the statutory duty to:

- Make such investigations and furnish the court with such information and assistance as the judge may require;
- Keep a written record of such investigations and submit reports thereon to the judge;
- Take charge of children before and after the hearing as may be directed by the court; and,
- Perform such other duties and exercise such powers as the judge of the juvenile court may recommend.

The juvenile officer is also vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office. *See* Section 211.401 RSMo.

Juvenile Court – The "juvenile court" means the juvenile division(s) of the circuit court of the county, or judges while hearing juvenile cases assigned to them. (*See* Section 211.021(3) RSMo.) The juvenile judge is the judge of this court (*See* Supreme Court Rule 110.05 a. (9).) In larger jurisdictions they also have commissioners who have the power to hear and make findings and recommendations in cases or proceedings assigned to them by general or special order of the juvenile judge. (*See* Supreme Court Rule 129.04) The judge or commissioner makes rulings in juvenile/family court in cases where the juvenile/family court has jurisdiction.

Juvenile Detention Facility – There are 24 secure juvenile detention facilities in Missouri administered at the county or regional level by a juvenile and family court. Detention is used as a short-term placement for youth awaiting hearings, primarily youth awaiting adjudication or awaiting placement. Youth alleged to have violated probation may be detained temporarily while awaiting adjudication/disposition. Pending disposition, the juvenile court may hold a youth at a county juvenile detention facility, a public or privately run facility designed for the care and protection of children, a court-supervised shelter care facility, or other suitable custody as determined by the court. Secure detention may not be used as a disposition or as a sanction for probation violations.

Juvenile Judge – The juvenile judge is the judge of the juvenile court. In larger jurisdictions they also have commissioners who have the power to hear and make recommendations in cases or proceedings assigned to them by general or special order of the administrative judge. The judge or

commissioner makes rulings in juvenile/family court in cases where the juvenile/family court has jurisdiction. *See* Rule 110.05(a)(9) and Rule 129.04.

Missouri Children's Division – The Missouri Children's Division is the arm of the Missouri Department of Social Services charged with responding to reports of child abuse and neglect and administering a system of care for children who cannot safely remain at home. The Division also promotes early childhood and prevention program in partnership with other key stakeholders.

Division of Youth Services – The Division of Youth Services (DYS) is the state agency charged with the care and treatment of delinquent youth committed to its custody by one of the 45 Missouri juvenile courts. DYS programs are established to provide the mandated services enumerated in Chapter 219.016 in the Revised Statutes of the state of Missouri. These services include assessment, care and treatment, and education of all youth committed to its care. Toward this end, DYS operates treatment programs ranging from non-residential day treatment centers through secure residential institutions.

Additionally, DYS administers the Interstate Compact on Juveniles, operates an accredited school program, and maintains a statewide statistical database of juvenile court referrals. DYS is administratively organized into one central office and five regional offices.

Missouri Department of Mental Health – The Missouri Department of Mental Health's Division of Comprehensive Psychiatric Services divides Missouri into 25 service areas. Each area has a Community Mental Health Center that provides psychiatric services to individuals in need and is designated as the division's Administrative Agent. These Administrative

Agents serve as the primary entry and exit point for state mental health services and are responsible for the assessment and services to both adults and children in their assigned area and for providing follow-up services for individuals released from state-operated inpatient hospitals.

Missouri Department of Public Safety – The Juvenile Justice Program of the Missouri Department of Public Safety is responsible for administering federal grants that help support local juvenile justice and delinquency prevention initiatives. It is also responsible for the on-site monitoring of law enforcement and juvenile facilities, as well as disproportionately minority contact.

Missouri Juvenile Justice Association – The Missouri Juvenile Justice Association (MJJA) is a statewide, private not-for-profit organization whose mission is dedicated to promoting justice for children, youth, and families within Missouri. The organization provides training, advocacy, and two statewide educational conferences annually.

Private Organizations – There is a variety of private nonprofit organizations that serve children, providing services from advocacy to crisis intervention to residential treatment.

Legal Framework

1) **Constitution** – The fundamental law of a nation or state which establishes the character and conception of its government. *US and Missouri Constitution.*

2) **Statute** – A law enacted and established by the legislature and approved by the governor regarding the substantive rights of citizens.

3) **Supreme Court Rules** – Rules created by the Missouri Supreme Court relating to the practice, procedure, and pleadings for all courts, which shall have the force and effect of law. *Missouri Constitution, Article V, Section 5.*

4) **Case Law** – Judicial interpretation of the constitution, statutes and rules, as reflected in the written opinion or decision in a particular case.

5) **Conflict between rule and statute** – If there is a conflict between a rule and a statute, the rule prevails in matters of procedure and the statute prevails in matters of substance.

Note: State agencies establish their own policies and procedures. These are not enacted by the legislature.

Applicable Missouri Juvenile Law

1) **Chapter 211 RSMo. (Revised Missouri Statutes). The Juvenile Code for the State of Missouri.**

Purpose of the law – how construed – "the purpose of this chapter is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. This chapter shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control as will conduce to the child's welfare and the best interests of the state, and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them. The child welfare policy of this state is what is in the best interests of the child." Section 211.011 RSMo.

2) **Chapter 210 RSMo. Child Protection and Reformation** – the laws relating to child abuse and neglect in the State of Missouri. Chapter 210 of the Revised Missouri Statutes promulgates the general provisions for child protection, child abuse/neglect law, the provisions of the Interstate Compact on Juveniles, the Uniform Parentage Act and other miscellaneous issues relating to child welfare and governance of the Missouri Department of Social Services.

Purpose of the law – This area of the statutes charges the Missouri Department of Social Services with meeting the needs of homeless, dependent and neglected children and defines the requirements for numerous processes such as the licensing of

foster homes, child fatality review panels and mandating reporting of child abuse and neglect.

3) **Supreme Court of Missouri – Rules of Practice and Procedures in Juvenile Courts**, Rules 110 through 129.
The Supreme Court Rules govern practice and procedure in the juvenile courts.

a) The Supreme Court Rules are promulgated pursuant to the authority granted the Supreme Court by section 5 of article V of the Constitution of Missouri.

b) The Supreme Court Rules supersede all statutes and existing court rules that are inconsistent with the Supreme Court Rules with respect to the juvenile court proceedings.

c) The Supreme Court Rules are intended to provide for the just determination of proceedings in courts.

d) The Supreme Court Rules should be construed in a manner to assure simplicity and uniformity in judicial procedure and fairness in the administration of justice and to conduce to the welfare of the juvenile and the best interests of the State.

4) **The Missouri Criminal Code – A Handbook for Law Enforcement Officers**

The Missouri Criminal Code – A Handbook for Law Enforcement Officers provides a clear description of the elements of a particular offense, which serves as the basis for determining the appropriate referral offense.

It is important to know the elements of a particular crime so that:

- an appropriate referral is made;
- a thorough investigation can be done to ensure that sufficient evidence is collected that will allow the juvenile office to charge the appropriate offense(s); and,
- to determine that an offense which would bring the juvenile within the jurisdiction of the juvenile court actually occurred.

Missouri Statutes Online:
http://www.moga.missouri.gov/STATUTES/STATUTES.HTM

5) **Case Law**

Case law is the aggregate of reported cases that form the law of a particular subject based on court interpretation or application of statutes, regulations, and constitutional provisions. *See* BLACK'S LAW DICTIONARY 216 (6th ed. 1990).

6) **Missouri Courts**

Missouri circuit courts are courts of original civil and criminal jurisdiction. That is, cases usually begin in the circuit court, which is where trials may occur. Within the circuit court, there are various divisions, such as associate circuit, small claims, municipal, family, probate, criminal, and juvenile.

Missouri's counties and the city of St. Louis are organized into 45 judicial circuits. There is a court in every county. The circuit court is typically in the county seat (or the city of St. Louis) and may be in additional locations in the county. *See* http://www.courts.mo.gov/page.asp?id=321.

The Court of Appeals is the intermediate appellate court. It handles appeals from the circuit courts. That is, if a party loses at the circuit court and believes a mistake was made, that party may file an appeal. The Court of Appeals handles all appeals except those in the Supreme Court's exclusive jurisdiction. Cases initially decided by the Court of Appeals may be transferred from the Court of Appeals to the Supreme Court. Historically, less than ten percent of appeals are transferred to the Supreme Court. Thus, for the vast majority of appeals, the Court of Appeals decision is final. *See* http://www.courts.mo.gov/page.asp?id=261.

The Supreme Court of Missouri has been the state's highest court since 1820, when the first Missouri constitution was adopted. The Supreme Court's role is to ensure a stable and predictable system of justice by serving as the final arbiter of disputes involving the state's constitution and laws. As such, it hears and decides many of the most important – and often the most controversial – legal issues affecting Missouri citizens, businesses, organizations and even factions of government.
See http://www.courts.mo.gov/page.asp?id=27.

7) **Precedence of Orders/Judgments**

The order or judgment of the juvenile court takes precedence over any other order or judgment concerning the status or custody of a child under age twenty-one entered by a court under authority of Chapter 452, 453, 454 and 455 RSMo., for so long as the juvenile court's order is in effect. The matter would then be subject to the other court's order or judgment upon termination

of the jurisdiction of the juvenile court. *See* Section 211.093 RSMo.

Example: A custody order is issued in a Dissolution of Marriage in the circuit court granting custody of a child to the natural mother. The juvenile court finds the natural mother physically abused the juvenile and subsequently placed the juvenile in the home of the natural father. The order of the juvenile court would take precedence over the order of the circuit as to this case and the juvenile would remain placed with the father for as long as the juvenile court's order remains in effect. If jurisdiction in the juvenile court were terminated, the previous order granting custody to the biological mother would be in effect.

Comparison between Adult and Juvenile Systems

There are several fundamental differences that exist in principle and purpose between the adult and juvenile justice systems.

The juvenile court system is based on the premise of "parens patriae" in which the government has the responsibility of acting in the place of the parent. Therefore, in Missouri, the juvenile court must act in place of the parent when necessary and apply a standard of care consistent to that which should be provided by an appropriate parent.

The juvenile system is restorative and designed to rehabilitate the young offenders and the adult system is punitive. Even the terminology of the juvenile justice system is different to promote that restorative philosophy.

It is important to learn the terminology in order to understand the juvenile justice process. The following is a comparison of terminology used in the juvenile and adult justice systems.

Juvenile Justice System	Adult System
Delinquency	**Criminal Act**
Taking a juvenile into custody	**Arresting**
Detention	**Jail**
Petition	**Information/Indictment/Complaint**
Adjudication	**Trial**
Under Jurisdiction/Adjudicated	**Convicted**
Disposition	**Sentence**
Supervision	**Probation**
Commitment to Division of Youth Services	**Prison Sentence**
Juvenile Officer	**Prosecutor**
Deputy Juvenile Officer	**Probation Officers**

Classification of a Case

There are six general classifications of cases that a Law Enforcement Officer will encounter in the juvenile system. It is important to determine the classification upon receipt of information to examine the facts and/or allegations presented in the complaint and classify the case as one of the six. The six classifications are:

1. Child abuse and neglect
2. Status offense
3. Delinquent offense
4. Traffic offense
5. Municipal curfew violation
6. Tobacco use or possession

(*See* Section 211.031.1 RSMo.)

The initial determination as to the classification of a case is critical as there are numerous factors relating to venue, jurisdiction, statutory timelines, and evidentiary standards dictated by the classification of the case.

Venue

Venue refers to the location where the court action must be held. All juvenile matters must be held in the Juvenile Division of the court system. The location (or county) where those matters must be heard is determined by the venue. Venue requirements differ based on the classification of the case. *See* Section 211.031.1 RSMo.

VENUE

Type of Case	Residence	Where Juvenile was Found	Where the Offense was Committed
Child Abuse or Neglect	Yes	Yes	No
Status Offense	Yes	Yes	No
Delinquent Offense	Yes	Yes	Yes

Additional Issues Regarding Venue

Residence – The residence of a juvenile is generally the residence of the juvenile's parents. In the event the parents do not reside together or the juvenile resides in the home of a legal custodian, the residence of the person, the residence is that of the person having custody. *See* in re R.P., 996 S.W.2d 292 (Mo. App. W.D. 1998).

Physical Presence – Physical presence in the county is sufficient for the court to exercise jurisdiction but the juvenile must be physically present in the county at the time of the filing of the petition to contemplate venue under the category of "found". *See* In Interest of T.B., 936 S.W.2d 913 (Mo.App.W.D. 1997) and In re Jackson, 592 S.W.2d 320 (Mo. App. S.D. 1979).

Jurisdiction

Jurisdiction is the power and authority of a court to hear and determine a judicial proceeding based on the geographic area in which the court has power and with respect to the subject matter in question. *See* BLACK'S LAW DICTIONARY 853 (6th ed. 1990).

The juvenile court has exclusive and original jurisdiction to hear cases of:

- Child Abuse and Neglect
- Status Offenses
- Delinquency
- Adoptions
- Termination of Parental Rights
- Cases for commitment to the guardianship of the Department of Social Services

See Section 211.031 RSMo.; MO. CONST. ARTICLE V, SECTION 14; and *State ex. rel. M.D.K. v. Dolan*, 968 S.W. 2d 740 (Mo.App.E.D. 1998)

Exceptions to the Exclusive Jurisdiction of the Juvenile Court

Traffic Offenses – The Juvenile Division does **not** have the authority to act or intervene in cases involving any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony offense. *See* Section 211.031.1(3) RSMo. (Additional information regarding traffic offenses may be found in Chapter VI, General Procedural Issues.)

Municipal Curfew Violations – The Juvenile Division shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance. *See* Section 211.031.1(3) RSMo. (Additional information regarding the local requirements regarding municipal curfew violations should be obtained from the appropriate representative of the local juvenile court or municipality.)

Tobacco Possession or Use – The Juvenile Division shall have concurrent jurisdiction with the circuit court as to any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product. *See* Section 211.031.1(3) RSMo. (Additional information regarding the local requirements regarding offenses relating to tobacco possession or use by juveniles should be obtained from the appropriate representative of the local juvenile court.)

Concurrent Jurisdiction – jurisdiction exercised by different courts at the same time over the same subject matter and where either court has the authority to adjudicate the issue. *See* BLACK'S LAW DICTIONARY 291 (6TH ED. 1990)

Age of the Juvenile

The age of a child is a critical element in determining whether a matter is subject to the jurisdiction of the juvenile court. Generally, the juvenile court may exercise jurisdiction until the child reaches his or her eighteenth birthday for issues of child abuse or neglect and until the juvenile reaches his or her seventeenth birthday for matters involving an allegation of delinquent conduct or a status offense. *See* Section 211.031.1(1-3) RSMo.

AGE OF THE JUVENILE	
TYPE OF CASE	**AGE RANGE SUBJECT TO JUVENILE COURT JURISDICTION [INCLUSIVE]**
Abuse/Neglect	[**BIRTH** ⟷ **AGE 17**]
Status Offense	[**BIRTH** ⟷ **AGE 16**]
Delinquent	[**BIRTH** ⟷ **AGE 16**]

The chronological age is the determining factor and "mental age" or "maturity level" are not relevant to this jurisdictional requirement. As to cases involving allegations of delinquent conduct pursuant to subsection 3 of Section 211.031 RSMo., the applicable age would be the age at the time alleged offense was committed. The age of the juvenile at the time of arrest or the filing of the petition in the juvenile court are irrelevant to the court's jurisdiction even in circumstances wherein the juvenile is now seventeen (17) years of age or older.

As a general rule, the juvenile court will not assume jurisdiction for status offenses allegedly committed prior to the juvenile attaining seventeen years of age when that juvenile was not previously subject to the jurisdiction of the juvenile court. However, a parent may petition the circuit court under limited circumstances to extend the jurisdiction of the juvenile court at any time after the minor child attains fifteen years of age

and before the minor child attains eighteen years of age pursuant to Section 211.034 RSMo.

Continuing Jurisdiction

The juvenile court may retain jurisdiction of a juvenile until the juvenile attains the age of twenty-one years where jurisdiction has been acquired pursuant to Section 211.031 RSMo.

Exceptions to Continuing Jurisdiction *See* Section 211.041 RSMo.

- Any law violations committed by a person seventeen years of age or older, even if the person is subject to the jurisdiction of the juvenile court must be prosecuted by a court of general jurisdiction.
- Jurisdiction of the juvenile court is terminated when a juvenile is committed to and received by the Division of Youth Services.
- Jurisdiction may be returned to the committing court pursuant to Chapter 219, RSMo. through a request of the court to the Division of Youth Services.

Jurisdiction may also be returned to the committing court where the juvenile has not paid an assessment imposed or in cases where a judgment for restitution has not been satisfied. *See* Section 211.181 RSMo. and Section 211.181 RSMo.

Custody Regulations

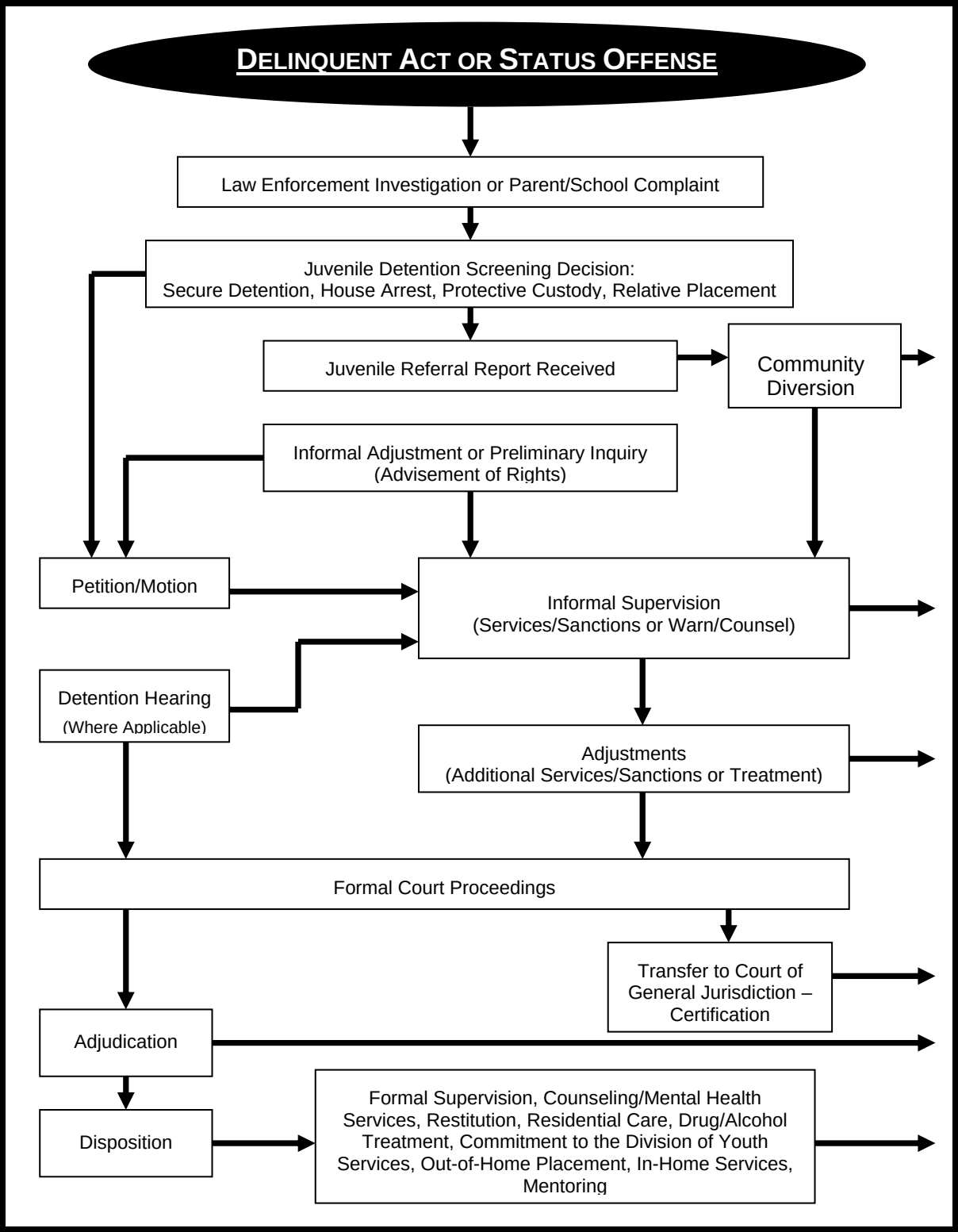
Significant procedural differences exist as to juvenile versus adult offenders in the temporary custodial control of Law Enforcement personnel. Under Federal regulation, alcohol, tobacco, and curfew violations are considered status offenses. The following chart delineates the basic limitations relating to custody of juvenile offenders.

Custody of Status vs. Delinquent Offenders
for
Law Enforcement Personnel
(Pursuant to Federal Regulations)

Status Offender	Delinquent Offender
✓ Do not use a holding cell	✓ May use a holding cell or locked room for processing purposes only and for up to 6 hours
✓ Do not cuff to a stationary object	✓ May cuff to a stationary object for processing purposes only and for up to 6 hours
✓ Do not lock in a room	✓ May lock in a room for processing purposes only and for up to 6 hours
✓ May cuff to a non-stationary object (ex: chair, table, themselves)	✓ May cuff to a non-stationary object (ex: chair, table, themselves)
✓ Do not allow sight or verbal contact with adult inmates or trustees	✓ Do not allow sight or verbal contact with adult or inmate trustees
✓ Keep a custody log	✓ Keep a custody log
✓ Check frequently	✓ Check frequently

Note: The total of any confinement of a juvenile in law enforcement custody cannot exceed six (6) hours. An officer may choose to place the delinquent offender in a cell for three hours, in a locked room for one hour and on a cuffing ring for two hours but the total of any confinement cannot exceed (6) six hours.

GENERAL CASE MANAGEMENT FLOWCHART



Certification or "Dismissal to Allow Prosecution of Juvenile Under General Law As An Adult"

A juvenile may not be charged with an adult crime or convicted of an offense unless transferred to a court of general jurisdiction or an "adult court". *See* Section 211.271.2 RSMo.

A hearing on whether a juvenile should be transferred to a court of general jurisdiction to allow prosecution under the general law is required if a petition alleges that a juvenile committed any of the following:

- First Degree Murder under Section 565.020, RSMo.
- Second Degree Murder under Section 565.021, RSMo.
- First Degree Assault under Section 565.050, RSMo.
- Forcible Rape under Section 566.030, RSMo.
- Forcible Sodomy under Section 566.060, RSMo.
- First Degree Robbery under Section 569.020, RSMo.
- Distribution of Drugs under Section 195.211, RSMo.
- If the juvenile has committed two or more prior unrelated offenses, which would be felonies if committed by an adult. (Generally, this is interpreted to imply two or more unrelated "adjudicated" offenses that would constitute a felony if committed by an adult.)

A juvenile of any age may be transferred to a court of general jurisdiction if the alleged offense falls within any of the above categories. The court is required to order a hearing and may in its discretion dismiss the petition and transfer the child to a court of general jurisdiction for prosecution under the general law.

The decision to dismiss the petition to allow for prosecution in a court of general jurisdiction is a discretionary decision for the court but the hearing itself is mandated by statute.

A juvenile may also be transferred to a court of general jurisdiction if:

1) **Age** – The juvenile is between the ages of 12 and 17 years of age; **AND,**
2) **Offense** – The juvenile has committed an offense which would be considered a felony if committed by an adult.

The court, upon the filing of a petition alleging an act that would constitution a felony if committed by an adult and wherein the juvenile subject to the proceeding is between twelve (12) and seventeen (17) years of age, may upon its own motion or upon motion by the juvenile officer, the juvenile or the juvenile's custodian, order a hearing to determine whether or not the petition should be dismissed to permit the juvenile to be transferred to a court of general jurisdiction and prosecuted under the general law.

The juvenile officer is required to provide the prosecuting or circuit attorney having jurisdiction with a copy of any motion filed for the purpose of allowing a juvenile to be transferred to a court of general jurisdiction for prosecution. The prosecuting or circuit attorney is allowed access to police reports, reports of the juvenile officer, witness statements and all other records or report relating to the offense alleged to have been committed by the child. In addition, the prosecuting or circuit attorney shall have access to prior dispositional regarding delinquent conduct. *See* Section 211.068 RSMo.

Age Misrepresentation

If a juvenile knowingly and willfully misrepresents his/her age, that misrepresentation shall not affect any action or proceeding that occurs based upon the misrepresentation. Any evidence obtained during the period when the juvenile misrepresents his age may be used against the juvenile and will be subject only to rules of evidence applicable in adult proceedings. *See* Section 211.071.3 RSMo.

Note: Upon an order of the court allowing a juvenile to be prosecuted under the general law or "certified", the jurisdiction of the juvenile court is forever terminated unless a court of general jurisdiction finds the juvenile not guilty. This generally implies that once the juvenile is certified, the juvenile is always certified, unless found not guilty in the adult court. A certified juvenile should be handled as an adult. However, law enforcement personnel should be extra vigilant in verifying the certification of the juvenile prior to custodial interrogations or incarceration in an adult jail or lockup. In the absence of the ability to verify the certification of a juvenile, it would be advisable to follow the procedural requirements associated with juvenile offenders.

In the event a juvenile is certified, but never charged in the adult court, subsequent offenses should be handled in the juvenile court and the juvenile re-certified as may be appropriate. *See* State v. K.J., 97 S.W.3d 543 (Mo.App.W.D. 2003)

Dual Jurisdiction

The adult court has the option of sentencing a certified juvenile to the "dual jurisdiction" of both the juvenile and criminal codes. The adult court may impose a disposition in the juvenile court with a parallel sentence in the adult court that is suspended contingent upon successful completion of the juvenile court disposition. A juvenile subject to dual jurisdictional would be committed to the custody of the Missouri Division of Youth Services. Time served under the juvenile disposition must be credited toward the sentence in the adult court. *See* Section 211.073 RSMo.

Chapter II – Delinquent Offenses Recommended Practices

Purpose

The Delinquent Offense Recommended Practices Chapter outlines recommended processes regarding juveniles who are alleged to have committed a delinquent act(s) pursuant to 211.031.1(3) RSMo.

Authority

The Juvenile Court has exclusive jurisdiction to adjudicate all matters that involve alleged delinquent conduct by a juvenile.

Missouri Juvenile Code: 211.031.1(3) RSMo.

"Involving any child who is alleged to have violated a state law or municipal ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of the circuit in which the child or person resides or may be found or in which the violation is alleged to have occurred; except that, shall not have jurisdiction over any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony, and except that the Juvenile Division shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance, and except that the Juvenile Division shall have concurrent jurisdiction with the circuit court on any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product." Section 211.031.1(3) RSMo.

Jurisdictional Requirements

Issues involving the following circumstances and conditions come within the jurisdiction of the Juvenile Division:

1) **Age –** The person alleged to have committed the delinquent act is from birth to seventeen years of age (not including seventeen years of age) or the alleged delinquent act was committed by the person prior to attaining the age of seventeen years; *See* Sections 211.031.1(3) and 211.041 RSMo, **AND**:

2) **Residency/Location** – The juvenile resides within the county or circuit in Missouri. (Resides or residency is generally the residence of the parent or custodian and if the parents are divorced, the residence of the person having actual physical custody). *See* Section 211.031.1(3) RSMo, In the Interest of R.P., 966 S.W. 2d 292 (W.D. Mo.Ct.App. 1998), **OR**:

   The juvenile is found within the county or circuit in Missouri [requires physical presence], *See* Section 211.031.1(3) RSMo, In re Jackson, 592 S.W.2d 320 (S.D. Mo.Ct.App. 1979), **OR**:

   The alleged offense committed by the juvenile occurred in the county or circuit in Missouri, *See* Section 211.031.1(3) RSMo; **AND**:

3) **Probable Cause** – Probable Cause exists that the juvenile committed an act of delinquent conduct. [Probable Cause exists where the facts and circumstances would warrant a person of reasonable caution to believe an offense was committed or is being committed.] *See* BLACK'S LAW DICTIONARY p. 1081 (5th ed. 1989).

Exceptions to the Exclusive Jurisdiction of the Juvenile Court

Traffic Offenses – The Juvenile Division does **NOT** have the authority to act or intervene in cases involving any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony offense. *See* Section 211.031.1(3).

Municipal Curfew Violations – The Juvenile Division shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance. *See* Section 211.031.1(3).

Tobacco Possession or Use – The Juvenile Division shall have concurrent jurisdiction with the circuit court on any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product. *See* Section 211.031.1(3) RSMo.

Areas of Responsibility

Law Enforcement

1) **Investigations** – Law Enforcement serves as the primary investigator of any criminal conduct or delinquent behavior by a juvenile. A thorough and appropriate law enforcement investigation which establishes probable cause that the juvenile committed an act of delinquency is required prior to any action by the Juvenile Division. Interviews of the juvenile should not be done without the juvenile officer present. *See* Section 211.411 RSMo.

   There are significant legal and procedural differences in dealing with juveniles, and law enforcement has a responsibility to ensure that all statutory requirements are adhered to in the

context of their investigation including custody limitations, differences regarding finger-printing and photographing of juveniles, custodial interviews, confidentiality, etc. Any person seventeen years of age or over who willfully violates, neglects or refuses to obey or perform any lawful order of the court, or who violates any provision of this chapter is guilty of a class A misdemeanor. *See* Section 211.431 RSMo.

2) **Gathering Evidence and Sufficiency –** Law Enforcement has the responsibility of gathering and maintaining supportive evidence in the course of the investigation of delinquent conduct. Evidence obtained during the investigation should be handled and processed consistent with the legal and procedural requirements of an adult criminal case. Juveniles committing delinquent offenses will be held accountable for their actions and provided services in the Juvenile Division. The ability to hold juveniles accountable and provide services is contingent upon a legally sufficient, timely and appropriate investigation and written report.

The burden of proof in a delinquency proceeding before the Juvenile Division is "beyond a reasonable doubt". The Juvenile Officer is required to prove each element of an offense at the same standard as an adult criminal case. Therefore, to ensure a juvenile offender is held accountable and provided services, as well as the interests of victims and the general public appropriately served, an investigation of the same level of sufficiency as would be presented to the prosecutor in an adult criminal case is required in each case involving alleged delinquent or unlawful conduct by a juvenile. *See* In re Winship, 397 U.S. 358 (1970); In re V.F.S., 172 S.W.3d 887 (Mo.App.S.D. 2005).

3) **Submitting Reports as Required –** Written reports and supporting documentation must be provided to the Juvenile Division in the required timeframe to ensure appropriate action in the interest of the juvenile and the state. *See* Section 211.411 RSMo; *See also* Rule 111.02 and Rule 111.11.

Additionally, the Missouri Supreme Court promulgated the "*Revised Standards for the Administration of Juvenile Justice"* in September of 2004 and therein acknowledged the importance of timely response to juvenile misconduct. It is imperative in the process of rehabilitating youth through the provision of meaningful services and sanctions while concomitantly ensuring the safety of the general public that the requisite reports alleging delinquent behavior are promptly delivered to the Juvenile Division so appropriate action may be undertaken by the Juvenile Officer as soon as practical. Arguably, any corrective action taken by the Juvenile Officer and/or Juvenile Division will be most effective when administered in a timely manner and therefore, a critical element to the success or failure of the juvenile system rests in the timeliness of reports submitted by law enforcement.

Juvenile Division

1) **Advisement of Rights** – The Juvenile Officer or designee shall have the responsibility of advising a juvenile of their constitutional rights prior to any in-custody interview or interrogation by law enforcement. *See* Rule 122.05, *See also* Section 211.059.1(1)-(4) RSMo.

2) **Authorization of Detention** – The Juvenile Officer or designee will review the written report of information as submitted by law enforcement and authorize detention in circumstances in which continued detention of the juvenile is required and release of the juvenile to a suitable parent, guardian, or custodian is not appropriate. *See* Rule 111.02 and Rule 111.06.

3) **Initiation and Facilitation of Juvenile Division Processes** – The Juvenile Officer or designee will have the responsibility of initiating and facilitating all subsequent Juvenile Division processes upon receipt of completed law enforcement investigation and written reports. *See* Section 211.401 RSMo and Rule 112.01.

Custody

Taking a Juvenile into Custody – A Law Enforcement Officer may take a juvenile into custody pursuant to an order of the court and pursuant to the laws of arrest applicable to adults regarding delinquent offenses. *See* Rule 111.01(a)(b).

Note: The order by the court to take a juvenile into custody may be in the form of a "summons", "capias", "pick-up order", "juvenile warrant", or other written order by the court. *See* Section 211.101.3 RSMo; Section 211.121 RSMo, and Rule 115.03.

See Rule 128.01 for recommended form. A copy of this recommended form can be located at the end of this chapter.

The taking of a juvenile into judicial custody is not an arrest. *See* Rule 111.01(b) and Section 211.131(2).

The jurisdiction of the court attaches from the time the juvenile is taken into judicial custody. *See* Rule 111.01(c) and Section 211.131(3) RSMo.

A Law Enforcement Officer may use all necessary means, including reasonable force in the process of taking a juvenile into custody. *See* Walsh v. Oehlert, 508 S.W. 2d 222 (Mo. App. E.D. 1974)

Procedure for Taking into Custody

1) **Identifying Information** – Obtain identifying information regarding the juvenile and custodian(s), including but not limited to: full name, social security number, date of birth, address, telephone number, physical description and the name and address of the parents and/or legal custodian. *See* Section 211.411 RSMo and Rule 111.02.

2) **Notification of Juvenile Division** – Immediately notify the Juvenile Division that the juvenile was taken into custody. *See* Rule 111.02.

3) **Notification of Custodian** – Make reasonable efforts to notify the juvenile's custodian the juvenile is in custody and request the custodian respond to the appropriate location as soon as practical. "Reasonable efforts" means those efforts an ordinarily careful, prudent, and diligent person would make under the same or similar circumstances. Rule 110.01(a)(23). *See* Rule 111.02(a) and Section 211.131.2 RSMo.

4) **Written Notification to Juvenile Officer** – In addition to the police report and/or Juvenile Referral Report, prepare a written notification to the Juvenile Officer that the juvenile was taken into custody. The report must include the above stated information and the basis for taking the juvenile into custody.

***Note**:* The Supreme Court of Missouri – Rules of Practice and Procedures in Juvenile Division require a "written report" be submitted to the Juvenile Officer any time a juvenile is taken into custody, including circumstances where a juvenile was taken into custody and subsequently released. This provision was included to ensure that the Juvenile Officer and, through the Juvenile Officer, the Court, is advised of all situations in which a juvenile is taken into custody and released by law enforcement. *See* Rule 111.02. A suggested form is included at the end of this chapter.

Release or Detention

A statutory presumption exists that the juvenile will be released to the juvenile's custodian or another suitable person unless "substantial reasons" exist for detaining the juvenile. *See* Rule 111.02c and Section 211.141.1 RSMo.

Detention is not appropriate in circumstances relating to corrective or punitive measures, behaviors associated with a mental illness or solely for investigative purposes.

Generally, appropriate reasons for detention in reference to delinquent acts may include, but are not limited to:

- Alleged acts resulting in serious bodily injury or property damage/loss which constitutes a felony.
- Acts of misconduct that placed any person or the general public at risk of serious harm.
- Acts of misconduct involving a weapon or sexual offense.
- Circumstances that indicate the juvenile is a significant flight risk and in need of protection.

- Circumstances that indicate the custodian lacks the ability to adequately supervise and manage the behavior of the juvenile pending further contact with the Court and/or the Juvenile Division.

Procedure for Release or Detention

1) **Release** – In most circumstances, the appropriate course of action will be to release the juvenile to the custodian or a suitable adult and advise the custodian or suitable adult accepting custody of the juvenile that a written report will be forwarded to the Juvenile Division and the Juvenile Officer will make contact upon receipt of the written report and initiate further proceedings in the Juvenile Division as may be appropriate. The person to whom a juvenile is released may be required to sign a written promise to produce the juvenile when required by the Court. *See* Rule 111.02 and Section 211.141 RSMo.

   Documentation – The Police Report/Juvenile Referral Report and the "Notification that the Juvenile was Taken into Custody and Released" should be completed and delivered to the Juvenile Division as soon as practical by the Law Enforcement Officer so a case may be initiated in the Juvenile Division as may be appropriate.

2) **Detention** – If continued detention of the juvenile is requested by the Law Enforcement Officer based on the circumstances for which the juvenile was taken into custody, the Officer should make contact with the Juvenile Officer or designee and advise of recommendation for continued detention.

The Law Enforcement Officer should present a written report which provides the Juvenile Officer with a "documentary basis for deciding whether to release or hold the juvenile in judicial custody". *See* Rule 111.02.

In the event the juvenile requires detention and the Juvenile Officer or designees has authorized placement in detention, the juvenile and the property in the juvenile's possession, shall be delivered to the Juvenile Officer. *See* Section 211.061 RSMo.

Note: A juvenile may only be detained in a detention facility as specified by the court and may not be detained in any jail or other adult detention facility. *See* Rule 111.03 and Section 211.151 RSMo.

The Juvenile Officer or designee has the authority to authorize the detention of a juvenile for a period of less than twenty-four hours. *See* Rule 111.06.

The Court must authorize continued detention for a period of more than twenty-four hours and is required to make a finding that probable cause exists that the juvenile committed acts specified in the petition or motion that brings the juvenile within the jurisdiction of the Juvenile Division. *See* Rule 111.06(d).

Documentation – A sufficient police report/Juvenile Referral Report, inclusive of a narrative detailing factual information and supporting statements and a probable cause statement is generally required for continued detention of a juvenile. These documents serve as the evidentiary and legal basis to substantiate that detention of the juvenile is required and will serve as the probable cause presented to the Court in support of a request to continue the juvenile in detention for a period of more than twenty-four (24) hours as previously authorized by the Juvenile Officer. In the event the written reports have not been received to facilitate the presentation of the information to the

Juvenile Division Judge to request an order continuing the juvenile in detention, the juvenile must be released. *See* Rule 111.06(d) and Rule 111.07(a)(2). A sample Juvenile Referral Report and Probable Cause Statement can be found at the end of this chapter.

Issues Relating to Custody

Right to Be Taken Before the Court – Upon being taken into custody, a juvenile shall be taken immediately before the juvenile court or delivered to the juvenile officer. *See* Section 211.061, RSMo 1994; State v. Arbeiter, 408 S.W.2d 26 (Mo. 1966); State v. Pierce, 749 S.W.2d 397 (Mo. Banc 1988).

In *Arbeiter,* the Supreme Court of Missouri stated that, once a sufficient reason for taking a juvenile into custody is determined, law enforcement officers are required to take the juvenile immediately and directly to the juvenile court. The juvenile court's function then becomes to determine whether sufficient grounds exist to exercise jurisdiction. The Court held that statements elicited by police interrogators from the fifteen-year-old defendant before he was taken to the juvenile authorities were inadmissible as being in violation of Section 211.061. *Id. See* also State v. Wade, 531 S.W.2d 726 (Mo. banc 1976), where the Court held that it was reversible error for the trial court to admit a police officer's testimony concerning the oral confession of a sixteen-year-old defendant who had not been taken to the juvenile authorities before interrogation.

In Kunkel v. State, 501 S.W.2d 52 (Mo. 1973), the sixteen-year-old defendant committed car theft and murder and was interrogated by the police before being brought before the juvenile authorities. He was subsequently tried as an adult and pleaded guilty to the charges. The defendant argued that he had pleaded guilty after police had taken his statement, returned him to the scene of the crime, searched and seized his property, and kept him in jail overnight, all before taking him to the juvenile court "immediately and directly" as required by law. The Court, noting that the defendant voluntarily entered the guilty plea at trial with

the advice of counsel and after conferring with relatives, held that defects in the juvenile proceeding were not sufficient reasons to invalidate his knowing and voluntary plea. *Id.*

In State v. Pierce, the Court found that the letter and spirit of Section 211.061 were followed when the police took the juvenile to the juvenile authorities immediately after apprehending him.

Sight and Sound Separation – Juveniles in law enforcement custody must be separated by sight and sound from any adult inmates and arrestees at all times.

Searches – Juveniles should be searched for weapons and illegal contraband upon being placed in custody. Searches should be conducted in the most discreet manner possible and when possible, Law Enforcement Officers of the same sex as the juvenile should conduct the search.

Handcuffing – Juveniles may be handcuffed as needed to ensure the safety of all parties, including the juvenile. Juveniles under the age of thirteen should not be handcuffed as a matter of general practice unless the juvenile is combative or a threat to themselves.

Supervision – Juveniles in law enforcement custody should not be left unsupervised and constant visual supervision should be maintained at all times.

Fingerprints/Photographs

Pursuant to Section 211.151 RSMo, law enforcement officers shall fingerprint and photograph any juvenile taken into custody for offenses that would constitute a felony if committed by an adult. This is a statutory requirement and consent by the Juvenile Division is not required.

For misdemeanors, a juvenile's fingerprints and photographs may be obtained by a juvenile court order from the judge. All Police Departments should have on hand "**Juvenile Fingerprint Cards**", which can be obtained by contacting:

Missouri State Highway Patrol
Criminal Records and Identification Division
PO Box 9500
Jefferson City, Missouri 65102

or by calling 573-526-6144.

Check with your local department concerning the process for fingerprinting and photographing.

The juvenile's fingerprints and photographs should be forwarded to the Juvenile Office, which will send the fingerprints to the Highway Patrol and maintain custody of the photograph.

Records

All juvenile records (including fingerprints and photographs) must be kept separate from those of adults. No juvenile records held by law enforcement agencies may be released to any private individual/victim EXCEPT by court order. *See* Section 211.321.3 RSMo.

Interviews and Interrogations

Any juvenile taken into custody in connection with an investigation of a delinquent offense must be afforded all rights to which he/she would be entitled to if he/she were an adult, including full advice as to constitutional rights in compliance with the *Miranda* decision and statutory requirements.

Rule 122.05 provides that, before an in-custody interview or interrogation begins, a juvenile must be advised by the Juvenile Officer, or by a designee trained by the Juvenile Officer, of each of the following rights:

1) The right to remain silent;
2) The right to an attorney and if the juvenile is unable to afford an attorney, that one will be provided;
3) Any statement made to the Juvenile Officer or Juvenile Division personnel may be used in later Juvenile Division proceedings;
4) That if the juvenile indicates in any manner at any time in the interview, they do not wish to be questioned further, the questioning will stop;
5) Any statement to law enforcement or persons other than the Juvenile Officer or Juvenile Division personnel may be used against the juvenile in the event the juvenile is prosecuted as an adult.

The admissibility of any juvenile statement is determined from the totality of circumstances on a case-by-case basis. The Court will evaluate the juvenile's age, experience, education, background, intelligence and whether the juvenile has the capacity to understand the warnings given to him, the nature of the Fifth Amendment of the United States Constitution rights and the consequences of waiving those rights. *See* in the Interest of A.D.R., 603 S.W. 2d 575(Mo. 1980)

A juvenile may waive the right to have a parent, guardian, or custodian present, but the parent must be present and advised of the juvenile's right to an attorney and to remain silent, and the juvenile must be given the opportunity to consult with the parent, guardian, or custodian as to the waiver of the aforesaid rights. *See* In the Interest of K.W.D., 500 S.W. 2d 275 (Mo. App. 973).

The Juvenile Officer or designee may not participate in the actual interview or questioning of the juvenile and participation by the Juvenile Officer may negate the admissibility of a confession or evidence in subsequent proceedings. *See* State v. Tolliver, 561 S.W. 2d 407 (Mo. App. 1977).

A juvenile should be considered "in custody" at a point in time where if they were an adult, law enforcement would consider them under arrest and read the adult the Miranda warning prior to further questioning. *See* generally, Rule 111.01.

Recommendations for Interviews and Interrogations

Contact the Juvenile Division to schedule the interview. The Juvenile Division will request the identifying information regarding the juvenile, the name and address of the parent and information as to the nature of the offense and the basis for the request to interview the juvenile suspect.

Contact the parent or custodian and direct them to respond to Juvenile Division and to bring the juvenile with them if the juvenile is not in custody.

The Juvenile Officer or designee will inform the juvenile of their rights and review the Juvenile Rights Waiver form and each element of the same with the juvenile. The Juvenile Officer or designee is responsible for ensuring the juvenile and parent(s) understand the rights and information contained in the Juvenile Rights Waiver.

General Conditions for Interviews and Interrogations

- The atmosphere should be non-intimidating to the juvenile. Weapons should not be visible and no more than two law enforcement officers should be present at the time of the interview.
- The interview should be for a reasonable length of time and include break and/or rest periods if the interview is of a substantial time period.
- A juvenile should only be questioned in circumstances in which the interview is necessary to further the investigative process and those offenses of a serious nature (felony offenses).
- If the juvenile is represented by an attorney, no person may interview or interrogate a juvenile unless the attorney is present or has consented to the interview.

At the conclusion of the interview, the Juvenile Officer or designee will make a photocopy of the Juvenile Rights Waiver and provide the original Juvenile Rights Waiver form to the Law Enforcement Officer. This original form should be included as part of the Juvenile Referral Report/Police Report.

Juvenile Referral Report/Police Report

Juvenile Referral Report/Police Report should be completed regarding any complaint in which sufficient probable cause and evidence exist to believe the juvenile committed the acts as alleged. The report should minimally contain the following information:

1) **Identifying information regarding the juvenile suspect** – full name, social security number, sex, race, age, date of birth, address, telephone number, school, nicknames or alias, a physical description and indicators of any significant physical or mental health issues.
2) **Information regarding custodian/parents** – Identifying information regarding the juvenile's custodian and/or parent's – including the non-custodial parent.
3) **Reason for the referral** must be consistent with statutory offenses and identify the offense type and classification.

   Examples:

   a. Robbery in the First Degree (Section 569.020 RSMo.) Class A Felony
   b. Stealing (Section 570.030 RSMo.) Class A Misdemeanor

   Not:

   a. Juvenile Misbehavior
   b. Drug Use or Drug Offenses
   c. Juvenile Mischief
   d. Delinquency
   e. Threats

   The basis for the referral/report must identify a law violation as defined by statute, which will also serve as a basis for notification of the charges against the juvenile as required.
4) **Date and time the alleged offense occurred**.
5) **Location the offense allegedly occurred**.
6) **Witnesses** – The name and address of the witness(s) to the alleged offense.

7) **Complainant or Victim** – The name and address of the complainant or alleged victim.

8) **Date and Time of contact the juvenile's parent/custodian** was initiated.

9) **Report Number** – The agency report number.

10) **Narrative** – A narrative that:
    - outlines investigative processes and outcomes in support of the Reason for Referral
    - establishes the elements of the offense as defined in The Missouri Criminal Code – A Handbook for Law Enforcement Officers
    - identifies evidence collected in the course of the investigation and the maintenance of the same

11) **Copies of all statements, documents or photographs** obtained in the course of the investigation.

In addition to the necessity of including the aforesaid information in the Juvenile Referral Report/Police Report, it is also critical to ensure the referral is forwarded to the Juvenile Officer as soon as practical to facilitate efficient and effective action by the Juvenile Division. As previously defined, in the event a juvenile requires detention, a Juvenile Referral Report/Police Report must be received upon presentation to the juvenile detention facility. *See* Section 111.02 RSMo.

Probable Cause Statement

A Probable Cause Statement should be completed regarding any felony offense and regarding any juvenile requiring detention. This Probable Cause Statement will serve as the primary evidentiary statement presented to the Juvenile Division Judge in a request to continue the juvenile in detention for a period of more than twenty-four hours as may be authorized by the Juvenile Officer or designee. The Probable Cause Statement should clearly establish the basis for the Law Enforcement Officer's belief that the juvenile committed the acts as alleged in the Juvenile Referral Report.

A suggested form is included at the end of this chapter.

Notification that Juvenile was Taken into Custody and Released

NOTIFICATION THAT JUVENILE WAS TAKEN INTO CUSTODY AND RELEASED

TO: _____, Chief Juvenile Officer of _____ County, Missouri:

(Juvenile Name), Male, age , a juvenile of (Enter City), Missouri was taken into custody by the undersigned at (Enter city), Missouri, at , o'clock a.m. on the (Date) day of (Month), 200 , for the reason that (Enter Reason) and was thereafter released to the juvenile's custodian, (Enter Custodian), of (Enter City), Missouri.

_____
Law Enforcement Officer

JUVENILE REFERRAL REPORT

To Be Printed or Typewritten

PERSONAL DATA ON JUVENILE

Full Name of Juvenile (Last)	(First)	(Middle)	Sex	Race	Age	Birthdate
Address (Street)	(City)	(State) (Zip)	Res. Phone		Grade	School

Nickname or Alias	Social Security Number	Height	Weight	Hair	Eyes	Complexion	Phys. Cond.

Father	Address	Phone	Work Phone
Mother	Address	Phone	Work Phone

REFERRING AGENCY INFORMATION

Reason for Referral	Where Committed	Date Comm.	Time Comm.
Agency Making Referral	Person Making Report	Date	I.D. No.
Witness to Offense	Address		Phone
Complaint and/or Victim	Address		Phone
Other Juvenile Involved	Police Report Number		
Parents Contacted By	Date	Time	Disposition of Juvenile

Statement Taken Yes ☐ No ☐ | **In Presence of Parent** ☐ **Juvenile Officer** ☐ **Attorney** ☐

Details:

FOR JUVENILE COURT USE ONLY

Reviewed By	Date	Assign To	Date

File No.

Active _____ Inactive _____ New _____ D.J.O. _____

IN THE _____ JUDICIAL CIRCUIT COURT, _____, MISSOURI

Judge or Division: **Order to Take Juvenile Into Judicial Custody**		**Case Number:**
In the Interest of:		Juvenile/Family Court Address:
Sex: ☐ F ☐ M	DOB:	
SSN:	Race:	
Height:	Weight:	
Hair Color:	Eye Color:	
Visible Identifying Marks (e.g. tattoos, birthmarks, braces, mustache, beard, pierced ear, glasses):		(Date File Stamp)

Order to Take Juvenile Into Judicial Custody

The State of Missouri to: Any Peace Officer or Juvenile Officer in the State of Missouri

You are ordered to take into judicial custody the above named juvenile, who is alleged to be within the jurisdiction of this Court for the reason that: _____

_____

_____

The juvenile described above may be found at: _____.

You shall immediately bring the juvenile before this Court to be dealt with in accordance with law. Pending appearance in this Court, the juvenile shall be held in

☐ Secure Detention at _____.

☐ Non-Secure Detention at _____.

☐ Children's Division Custody _____.

☐ Other _____.

You, the officer serving this order, shall immediately execute in writing a return on this order to this Court.

So Ordered:

(Seal) _____ Date _____ Judge

Server's Return

I certify that I served the above order in _____ (County/City of St. Louis), Missouri, on _____ (date).

_____ Name

_____ Title

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Probable Cause Statement

PROBABLE CAUSE STATEMENT

I, _____ (Print Name), am a duly authorized law enforcement officer in the State of Missouri, and knowing that false statements as to this ***PROBABLE CAUSE STATEMENT*** are punishable by law, state the facts contained herein are true and correct.

I. I have probable cause to believe that _____ (Print Juvenile Name) is a juvenile as defined by statute and that the aforesaid juvenile committed one or more delinquent offenses or status offenses pursuant to 211.031 RSMo.

A. The aforesaid juvenile is identified as:

Juvenile Name: _____ (First) ___ (MI) _____ (Last)

Date of Birth: _____ Age: _____

Address: _____

B. The date(s) the delinquent or status offense occurred: _____

II. The facts supporting this belief are as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I swear or affirm under penalty of law for making false statements or perjury, that the facts stated in the foregoing ***PROBABLE CAUSE STATEMENT*** are true and correct to the best of my knowledge and belief.

Dated this _____ day of _____, 200___ at _____:_____ A.M. / P.M.

_____
Signature

_____
Print Name

Notification and Waiver of Juvenile Rights

Notification and Waiver of Juvenile Rights

Juvenile Name: _____ Location: _____

DOB: _____ Date: _____ Time Started: _____

Before law enforcement asks you any questions, you must understand your rights as follows:

		Initials
1.	You have the right to remain silent; and	
2.	That any statement that you make to anyone can be and may be used against you; and	
3.	You have a right to have a parent, guardian or custodian present during questioning; and	
4.	You have the right to consult with an attorney and that one will be appointed, and paid for you, if you cannot afford one; and	
5.	If you indicate in any manner, during any portion of the questioning, that you do not wish to be questioned further, the questioning will stop.	

FURTHER:

If you are twelve (12) years of age or older and have committed an act which would be a felony if committed by an adult, the Court may permit you to be prosecuted as an adult.

If you are of any age and have committed one of the following: first degree murder (565.020) RSMo., second degree murder (565.021) RSMo., first degree assault (565.050) RSMo., forcible rape (566.030) RSMo., forcible sodomy (566.060) RSMo., first degree robbery (569.020) RSMo., distribution of drugs (195.211) RSMo., or have two or more prior unrelated felony offenses, the Court shall order a hearing and may permit you to be prosecuted as an adult.

If such is the case, anything you say to the law enforcement officials or any other person, besides the Juvenile Officer or Juvenile Court personnel, may be used against you in a criminal proceedings.

I have read, or been read, the statement of my rights shown above. I understand my rights and I am willing to answer questions and make a statement. I do not want an attorney. No promises or threats have been made to me and no pressure of any kind has been used against me.

I _____ agree to waive my rights.
(Print Name)

_____
Juvenile Signature

_____
Parent/Guardian

_____
Juvenile Officer or Designee

_____
Law Enforcement Officer

_____
Date/Time Statement Completed

Voluntary Statement

VOLUNTARY STATEMENT
(JUVENILE)

I, _____, a juvenile under seventeen years of age, without promise of hope or reward, without fear or threat of physical harm, and with the knowledge that the facts I am about to describe below may be used as evidence against me, freely volunteer the following information to [agency] and law enforcement .

I am _____ years old, and I reside at _____.

My voluntary statement is as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I have read this page of this statement and I certify that the facts above are true and correct. _____ (Initials)

Dated this _____ day of _____, 2007.

_____	_____
Juvenile Officer or Designee	Juvenile Signature
_____	_____
Law Enforcement Officer	Parent/Guardian

Page _____ of _____

Chapter III – Status Offenses

Purpose

Issues relating to status offenders or those children demonstrating behaviors that may be characterized as unruly, disobedient, and unmanageable by those charged with the care, custody, and control of the child remain problematic for the juvenile justice system.

Those children are not appropriately served by the same range of services and sanctions provided to the more serious delinquent offenders. Many state and nongovernmental youth serving agencies advocate for removal of status offenders from the jurisdiction of the Juvenile Division. Some jurisdictions within the State of Missouri have adopted that stance. Others continue to serve status offenders as a matter of regular practice and procedure in the Juvenile and Family court process.

Therefore, protocols and procedures vary significantly between jurisdictions. The best practice protocol is to establish a dialogue with the Juvenile Officer and the youth serving agencies within your jurisdiction and learn what services are available for status offenders.

The following is a general overview of issues and requirements regarding children who are alleged to have committed a status offense pursuant to Section 211.031.1 (2) RSMo.

Authority

Missouri Juvenile Code: Section 211.031.1(2) RSM0. – Involving any child who may be a resident of the county or is found within the county and who is alleged to be in need of care and treatment because:

(a) The child while subject to compulsory school attendance is repeatedly and without justification absent from school; or,

(b) The child disobeys the reasonable and lawful directions of his or her parents or custodian and is beyond their control; or,

(c) The child is habitually absent from his or her home without sufficient cause, justification or permission; or,

(d) The behavior or associations of the child are otherwise injurious to his or her welfare or to the welfare of others; or,

(e) Other offenses applicable to children only, including curfew violations and minor in possession.

Jurisdictional Requirements

Issues involving the following circumstances and conditions come within the jurisdiction of the Juvenile Division:

1) **Age** – The person alleged to have committed the status offense is from birth to seventeen years of age (not including seventeen years of age); AND:

2) **Residency** – The juvenile resides within the county [resides or residency is generally the residence of the parent or custodian and if the parents are divorced, the residence of the person having actual physical custody], OR:
The juvenile is found within the county [requires physical presence], AND:

3) **Probable Cause** – Probable Cause exists that the juvenile committed an act classified as a status offense. [Probable Cause

exists where the facts and circumstances would warrant a person of reasonable caution to believe an offense was committed or is being committed.]

Exceptions to the Exclusive Jurisdiction of the Juvenile Court

Traffic Ordinance or Regulation – The Juvenile Division does NOT have the authority to act or intervene in cases involving any child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic ordinance or regulation, the violation of which does not constitute a felony.

Curfew – The Juvenile Division shall have concurrent jurisdiction with the municipal court over any child who is alleged to have violated a municipal curfew ordinance.

Tobacco – The Juvenile Division shall have concurrent jurisdiction with the circuit court on any child who is alleged to have violated a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product.

Areas of Responsibility

Law Enforcement

1) **Investigations and Initial Contact** – Law enforcement serves as the initial contact and primary investigator of any reported incidents involving juvenile status offenders. A thorough and appropriate law enforcement investigation which establishes probable cause that the juvenile committed the status offense(s) alleged is required prior to any action by the Juvenile Division.

2) **Written Report** – Juveniles in need of care and treatment regarding inappropriate behavior and conduct relating to status offenses will be held accountable for their actions and provided appropriate services in the Juvenile Division but the ability to hold juveniles accountable and provide services is contingent upon a legally sufficient, timely and appropriate investigation and written report.

Juvenile Division

The Juvenile Officer or designee will have the responsibility of initiating and facilitating all subsequent Juvenile Division processes upon receipt of the completed law enforcement investigation and written reports.

Custody

Taking into Custody – A Law Enforcement Officer may take a juvenile into custody pursuant to an order of the court and pursuant to the laws of arrest applicable to adults regarding status offenses. *See* Rule 111.01(a)(b).

Note: The order by the court to take a juvenile into custody may be in the form of a "summons", "capias", "pick-up order", juvenile warrant", or other written order by the court. *See* Section 211.101.3 RSMo; Section 211.121 RSMo; and Rule 115.03.

See Rule 128.01 for the recommended form. A copy of this recommended form is located at the end of this chapter.

The taking of a juvenile into judicial custody is not an arrest. *See* Rule 111.01(b) and Section 211.131(2) RSMo.

The jurisdiction of the court attaches from the time the juvenile is taken into judicial custody. *See* Rule 111.01(c) and Section 211.131(3) RSMo.

Procedure for Taking into Custody

1) **Identifying Information** – Obtain identifying information regarding the juvenile and custodian(s). Required information includes: full name, social security number, date of birth, address, telephone number, physical description and the name and address of the parents and/or legal custodian.

2) **Notification of Custodian** – Notify the juvenile's custodian the juvenile is in custody and request immediate response to the appropriate location.

3) **Notification of Juvenile Division** – Notify the Juvenile Division that the juvenile is in custody and fulfill the statutory reporting requirement by reporting the above-stated identifying information, as well as, the reason for taking the juvenile into custody.

Detention of Status Offenders – Status offenders may not be detained in a secure juvenile detention facility as a matter of general practice and procedure and may not be detained for a period in excess of twenty-four (24) hours under any circumstances. A statutory presumption exists that the juvenile will be released to the juvenile's custodian or other suitable person as soon as practical unless detention is required and appropriately authorized by the juvenile center.

Procedure for Detention or Protective Custody

1) **Release** – In most circumstances, the appropriate course of action will be to release the juvenile to the custodian or a suitable adult and advise the custodian or suitable adult accepting custody that a Juvenile Referral Report will be forwarded to the juvenile center and the parents or custodian will be contacted upon

receipt of the Juvenile Referral Report for further proceedings in the Juvenile Division.

2) **Detention or Protective Custody** – If continued detention or protective custody of the juvenile is required and has been authorized regarding the incident for which the juvenile was taken into custody by a Law Enforcement Officer, the juvenile should be transported to the appropriate location.

3) **Required Documentation** – In the event the juvenile was released to the custodian or suitable adult, a Juvenile Referral Report should be completed and delivered to the Juvenile Division as soon as practical but not later than five (5) days following the release of the juvenile. If the juvenile is detained based on the circumstances for which the juvenile was taken into custody, a Juvenile Referral Report and a Probable Cause Statement must be provided to the Juvenile Division at the time of detention or protective custody. These documents serve as evidentiary and legal basis to retain temporary custody of the juvenile for a period of not more than twenty-four (24) hours.

Issues Relating to Custody

Sight and Sound Separation – Juveniles in law enforcement custody must be separated by sight and sound from any adult inmates and arrestees at all times.

Searches – Juveniles should be subjected to a pat down search for weapons and illegal contraband upon being placed in custody. Pat down searches should be conducted in the most discreet manner possible and when possible, law enforcement officers of the same sex as the juvenile should conduct the search.

Handcuffing – Juveniles should not be handcuffed or otherwise restrained as a matter of general practice and only in circumstances in which the juvenile is combative or an immediate threat to themselves or others. Juveniles may not be handcuffed to a stationary object.

Supervision – Juveniles in law enforcement custody should not be left unsupervised and constant visual supervision should be maintained at all times.

Fingerprints/Photographs

Any juvenile alleged to have committed a status offense may be fingerprinted or photographed by law enforcement with consent of the Juvenile Court Judge. *See* Section 211.151.3 RSMo.

Interviews and Interrogations

Juveniles alleged to have committed a status offense need not be subject to formal interviews or interrogations by Law Enforcement officials as status offenses are non-criminal in nature and relate to issues of the juvenile requiring care and treatment. However, if an interview is necessary, the recommended practice is the same as in a delinquency offense:

Contact the Juvenile Division to schedule the interview. The Juvenile Division will request the identifying information regarding the juvenile, the name and address of the parent and information as to the nature of the offense and the basis for the request to interview the juvenile suspect.

Contact the parent or custodian and direct them to respond to Juvenile Division and to bring the juvenile with them if the juvenile is not in custody.

Note: A juvenile may waive the right to have a parent, guardian, or custodian present but the parent must be present and advised of the juvenile's right to an attorney and to remain silent, and the juvenile must be given the opportunity to consult with the parent, guardian, or custodian as to the waiver of the aforesaid rights. *See* In the Interest of K.W.D., 500 S.W. 2d 275 (Mo. App. 973).

The Juvenile Officer or designee will inform the juvenile of their rights and review the Juvenile Rights Waiver form and each element of the same with the juvenile. The Juvenile Officer or designee is responsible for ensuring the juvenile and parent(s) understand the rights and information contained in the Juvenile Rights Waiver.

The Juvenile Officer or designee may not participate in the actual interview or questioning of the juvenile, as the role of the Juvenile Officer is the protection of the juvenile's rights by explaining those rights and ending the interrogation if so requested by the juvenile. Participation by the Juvenile Officer may negate the admissibility of a confession or evidence in subsequent proceedings. *See* State v. Tolliver, 561 S.W. 2d 407 (MO. App. 1977).

General Conditions for Interviews and Interrogations

- The atmosphere should be non-intimidating to the juvenile. Weapons should not be visible and no more than two law enforcement officers should be present at the time of the interview.
- The interview should be for a reasonable length of time and include break and/or rest periods if the interview is of a substantial time period.
- A juvenile should only be questioned in circumstances in which the interview is necessary to further the investigative process and those offenses of a serious nature (felony offenses).

- If the juvenile is represented by an attorney, no person may interview or interrogate a juvenile unless the attorney is present or has consented to the interview.

At the conclusion of the interview, the Juvenile Officer or designee will make a photocopy of the Juvenile Rights Waiver and provide the original Juvenile Rights Waiver form to the Law Enforcement Officer. This original form should be included as part of the Juvenile Referral Report/Police Report.

Procedural Issues

Beyond Parental Control

Statute: Section 211.031.1(2)(b). The following elements must be proven to substantiate a case of Beyond Parental Control:
Juvenile;

- disobeys the reasonable and lawful directions;
- of his or her parent(s) or other custodian; and,
- is beyond the control of the parent(s) or other custodian.

Common examples of this offense include a juvenile who is verbally abusive to the parent or custodian, a juvenile who refuses to follow parental directives regarding assigned tasks or chores, and a juvenile who fails to abide by household rules such as what time to return home or leaves without parental permission.

In most circumstances, the best practice is to de-escalate the situation, request the parent provide a written statement as to the juvenile's failure to obey reasonable and lawful directions and forward a Juvenile Referral Report to the Juvenile Division for assessment and case processing during the next business day.

Alternative dispositions may be required in the event the parent refuses to allow the juvenile to remain in the home or the situation cannot be de-

escalated to a point that the safety of the juvenile or family members may be assured.

Alternative dispositions may include:

A) **Voluntary temporary alternative care** – The parent may be given the option of voluntarily placing their child in the home of a relative or other suitable adult until the next business day when a Juvenile Officer or designee will meet with the juvenile and parent(s) for further assessment of the circumstances. In the event a parent exercises this option, all information regarding the placement provider (name, address, and telephone number) should be documented in the Juvenile Referral Report.

B) **Voluntary emergency mental health services** – The parent may be given the option of voluntarily obtaining emergency mental health services for their child.

C) **Temporary Protective Custody** – If the circumstances are such that the juvenile's behavior has de-escalated or the elements of the parent's complaint are relatively minor and the parent refuses to allow the juvenile to remain in the family home, a report to the Child Abuse and Neglect Hotline may be made and the juvenile can be placed in Temporary Protective Custody in that the juvenile has no suitable parent, guardian, or custodian to provide care and supervision based on the parent's refusal to have the juvenile remain in the family home. The Law Enforcement Officer should first report the issue to the Child Abuse and Neglect Hotline at 1-800-392-3738 and then contact the Juvenile Division.

If the circumstances are such that the juvenile's behavior has not de-escalated and the circumstances of the parent's complaint are serious in nature or a delinquent offense occurred in the context of this issue, the juvenile may be detained.

Runaway

Statute: Missouri Juvenile Code: 211.031.1(2)(c) RSMo. The following elements must be proven to substantiate a case of Runaway:

- juvenile;
- habitually absent from home; and,
- without sufficient cause, permission or justification.

In most circumstances, the usual practice and procedure relating to juvenile runaways will include releasing the juvenile to the parent or custodian and submitting a Juvenile Referral Report to the Juvenile Division for assessment and case processing during the next business day.

Alternative dispositions may be required in the event the parent refuses to allow the juvenile to remain in the home or reasonable cause exists to believe that the juvenile will leave home again without permission before the juvenile and parent can meet with a Juvenile Officer the next business day.

Alternative dispositions may include:

A) **Voluntary temporary alternative care** – The parent may be given the option of voluntarily placing their child in the home of a relative or other suitable adult until the next business day when a Juvenile Officer will meet with the juvenile and parent(s) for further assessment of the circumstances. In the event a parent exercises this option, all information regarding the placement provider (name, address, and telephone number) should be documented in the Juvenile Referral Report.

B) **Temporary Protective Custody** – If the circumstances are such that the juvenile's behavior has de-escalated or the elements of the parent's complaint are relatively minor and the parent refuses to allow the juvenile to remain in the family home, a report to the Child Abuse and Neglect Hotline should be made

and the juvenile should be placed in Temporary Protective Custody in that the juvenile has no suitable parent, guardian, or custodian to provide care and supervision based on the parent's refusal to have the juvenile remain in the family home. The Law Enforcement Officer should first report the issue to the Child Abuse and Neglect Hotline at 1-800-392-3738 and then contact the Juvenile Division.

If the circumstances are such that the juvenile's behavior or conduct indicates the juvenile continues to be a flight risk or the juvenile refuses to return to the family home, the juvenile may be detained in detention facility.

Behavior and Associations Injurious to Self or Others

Statute: *See* Section 211.031.1(2)(d) RSMo. The following elements must be proven to substantiate a case of Behavior and Associations Injurious to Self or Others:

- Juvenile; and,
- behavior or associations of the juvenile are injurious to his/her welfare or to the welfare of others.

This is a very broad category in which many circumstances of juvenile misconduct or behavior may be appropriate. The most common occurrences include: self-mutilation, suicidal behavior, consensual sexual activities among peers, associating with adult felons or negative influences and issues relating to curfew violations.

In most circumstances, the usual practice and procedure relating to Behavior and Associations Injurious to Self or Others will include notifying the parent of the situation, releasing the juvenile to the parent or custodian and submitting a Juvenile Referral Report to the Juvenile Division for assessment and case processing during the next business day.

Generally, a juvenile should not be held in a secure detention facility for issues relating to Behavior and Associations Injurious to Self or Others.

The juvenile's parent(s) or custodian should be given assistance in responding appropriately to the issues of concern. In the event a parent refuses or is incapable of responding appropriately to a crisis situation in which the juvenile needs emergency care, treatment or intervention, a report to the Child Abuse and Neglect Hotline should be made and the juvenile should be placed in Temporary Protective Custody pursuant to statutory requirements.

Truancy

Statute: *See* Section 211.031.1(2)(a) RSMo. The following elements must be proven to substantiate a case of truancy:

- Juvenile;
- subject to compulsory school attendance;
- repeatedly absent from school; and,
- without justification.

Issues related to truancy should be referred to the Juvenile Division for assessment and case processing during regular business hours.

Juveniles who are truant may be returned to school or released to their parent, guardian, or custodian and a Juvenile Referral Report forwarded to the Juvenile Division as soon as practical by the appropriate school or law enforcement agency.

Chapter IV – Child Abuse and Neglect

Purpose

The Child Abuse and Neglect Chapter will outline recommended practice and procedure regarding children who are alleged to be at risk of child abuse or neglect, or have been subjected to child abuse and neglect pursuant to Section 211.031.1(1)(a-b) RSMo.

Definitions

Abuse – The term "abuse" refers to any physical injury, sexual abuse or emotional abuse inflicted on a child other than by accidental means by those responsible for the child's care, custody and control, except that discipline including spanking, administered in a reasonable manner, shall not be construed to be abuse.

Neglect – The term "neglect" refers to the failure to provide, by those responsible for the care, custody and control of the child, the proper or necessary support, education as provided by the law, nutrition or medical, surgical, or other care necessary for the child's well-being.

Child – Regarding child abuse and neglect, a "child" is any person, regardless of physical or mental condition, under eighteen (18) years of age. *See* Section 210.110(3) RSMo.

Emergency Protective Custody – temporary placement by a law enforcement officer or physician within a hospital, medical facility, emergency foster care facility or such other suitable custody as authorized by the court of a juvenile alleged to have been abused or neglected, provided that such custody may not be within a secure detention facility. Emergency protective custody shall not exceed twelve hours. *See* Missouri Supreme Court Rule 111.11(c).

Statute

Missouri Juvenile Code: 211.031.1(1)(a-b) RSMo. – Except as otherwise provided in this chapter, the Juvenile Division or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:

Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:

(a) The parents, or other persons legally responsible for the care and support of the child or person seventeen years of age, neglect or refuse to provide proper support, education which is required by law, medical, surgical or other care necessary for his or her well-being; except that reliance by a parent, guardian, or custodian upon remedial treatment other than medical or surgical treatment for a child or person seventeen years of age shall not be construed as neglect when the treatment is recognized or permitted pursuant to the laws of this state;

(b) The child or person seventeen years of age is otherwise without proper care, custody or support;

(c) The child or person seventeen years of age was living in a room, building or other structure at the time such dwelling was found by a court of competent jurisdiction to be a public nuisance pursuant to section 195.130, RSMo; or,

(d) The child or person seventeen years of age is a child in need of mental health services and the parent, guardian, or custodian is unable to afford or access appropriate mental health treatment or care for the child.

Authority

Issues involving the following circumstances and conditions come within the jurisdiction of the Juvenile Division:

1) **Age** – The juvenile is from birth to eighteen years of age (not including eighteen years of age); AND,

2) **Residency** – The juvenile resides within the county (resides or residency is generally the residence of the parent or custodian and if the parents are divorced, the residence of the person having actual physical custody; OR,

   The juvenile is found within the county (requires physical presence); AND,

3) **Probable Cause** – Probable cause exists that the juvenile has been abused or neglected or is in circumstances that would reasonably result in abuse or neglect.

Custody

Emergency Protective Custody by Law Enforcement

Pursuant to Missouri Supreme Court Rule – 111.01(a)(3), a juvenile may be taken into emergency protective custody by a Law Enforcement Officer who has reasonable cause to believe that the juvenile is in **imminent danger** of suffering serious physical harm or threat to life as a result of abuse or neglect AND such person has reasonable cause to believe that harm or threat to life may occur **before** a court could issue a protective custody order or before the Juvenile Officer or designee could take temporary protective custody of the juvenile. *See* also Section 210.125 RSMo.

Immediate Notification Required – This provision applies to emergency circumstances in which the juvenile is in imminent danger and requires an immediate notification to the Juvenile Officer that the juvenile was taken into protective custody.

Additionally, the Law Enforcement Officer should:

1) **Make reasonable efforts to notify the juvenile's custodian** that the juvenile was placed in emergency protective custody;

2) **Report the alleged abuse** to the Child Abuse and Neglect Hotline at 1-800-392-3738;

3) **Complete Form CS-33** – the Missouri Children's Division Form CS-33 – Authorization to Provide Emergency Alternative Care;

4) **Complete a Juvenile Referral Report** inclusive of all identifying information and relevant information regarding the emergency circumstances requiring protective custody of the juvenile; and,

5) **Complete a Probable Cause Statement** to be filed with the Juvenile Division regarding the circumstances which necessitated temporary protective custody of the juvenile.

Temporary Protective Custody Taken by the Juvenile Officer

In the alternative, the Juvenile Officer or designee may authorize temporary protective custody of a juvenile upon reasonable cause to believe that the juvenile is without proper care, custody or support and that temporary protective custody is necessary to prevent harm to the juvenile.

Mandated Reporting

The first and most appropriate action in all cases of alleged child abuse and neglect in which no imminent danger or immediate threat to life exists is to make the mandated report to the Child Abuse and Neglect Hotline at 1-800-392-3728. Law enforcement officers are required to make a report of child abuse and neglect when they have reasonable cause to suspect that a child has been or may be subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse or neglect to the child.

Again, this report should be made as soon as the Law Enforcement Officer has knowledge of any of the conditions which mandate a report of child abuse and neglect and if a child is currently in custody, the officer should advise the Child Abuse and Neglect Hotline of the emergency nature of the report and request an immediate response from the on-call investigator for the Missouri Children's Division.

Categories of Abuse/Neglect

Physical Abuse

1) physical injury
2) inflicted on a child;
3) by non-accidental means;
4) whether the parent or custodian actually inflicted such injury; or,
5) whether the injury was inflicted by someone else and the parent should have known and failed to take action or appropriate action to protect the child.

Evidence of physical harm is generally required to support an allegation of physical abuse. Discipline, including spanking administered in a reasonable manner, shall not be construed to be physical abuse.

Sexual Abuse

1) sexual contact or activities
2) inflicted on a child;
3) by those responsible for the child's care, custody and control.

Evidence of physical injury or harm is not required in a case involving sexual abuse. Many sexual abuse cases consist of fondling or oral-genital touching, which does not usually cause marks, bruising or physical injury to the child.

Emotional Abuse

1) Close confinement and unreasonable physical restraint such as tying, binding, handcuffing or gagging a child, patterns of verbal or emotional assault and overly punitive or exploitative treatment such as deliberately denying a child food, shelter or sleep.
2) Professional psychiatric diagnosis may be needed to confirm a finding of emotional abuse.

Neglect

1) Failure to provide support, education, nutrition, medical care, or other care necessary – such as adequate supervision – for the child's well-being;
2) by those responsible for the child's care, custody and control.

Parent/Custodian Taken into Custody

One common situation where children are found to be without proper care, custody, and support is when the parent is arrested by law enforcement and the child is left without a suitable parent, guardian, or custodian to care for them.

If the circumstances are such that parent or custodian can voluntarily secure an appropriate temporary placement for their child and no other issues of abuse or neglect exist, they should be allowed to do so. This is many times in the best interests of the child as they will be placed with someone they know and the process is less traumatic for the child.

If the parent declines to voluntarily make such arrangements or other concerns as to the health, safety and well-being of the child exist, an immediate report to the Child Abuse and Neglect Hotline should be made at 1-800-392-3738. The Hotline should be informed that an immediate response is requested as the child is in need of a placement and continued custody within the confines of the law enforcement agency is not in the best interests of the child.

Placement Limitations and Conditions

The following limitations exist regarding custodial situations for victims of child abuse and neglect:

Restraints – Children subject to abuse and neglect should not be handcuffed or otherwise restrained unless the child represents an immediate threat to themselves or other persons.

Physical Placements – Placements of children subject to abuse and neglect are limited to those placements as approved by the Court. Actual physical placements should be facilitated by the Missouri Children's Division. When a child must go into protective custody, he or she may feel afraid, lost, and angry. This can be a very traumatic time for a child, especially when they are placed with a stranger.

To minimize this trauma, the Division has been mandated by law (*See* Section 210.565 RSMo.) to give preference and first consideration for foster care placement to a grandparent of a child. If grandparents are not available or are not interested in caring for their grandchild, other relative providers will be given first preference and first consideration over foster family placement providers. Law enforcement officers can assist in this process by getting names of relatives from caregivers at the time of arrest, or placement of children.

Transport – Victims of child abuse or neglect should not be transported to the Juvenile Division (or detention facility, if there is one available). Children should be held in a non-secure setting until a Children's Division Social Worker arrives to take custody and secure placement as required by law.

Questioning – If a child indicates in any manner, after being taken into custody by the Juvenile Officer or law enforcement, and inclusive of any acts involving the Missouri Children's Division, that they do not wish to be questioned further or they wish to have their parent, guardian, or custodian present and the parent, guardian, or custodian is not the alleged perpetrator, or the child wishes to have an attorney present, all questioning will cease until such time that the child does not object to further questioning. ***Note:*** This requirement shall not be construed to prevent asking questions necessary for the care, treatment, or placement of the child.

Photographs – A child taken into custody as a victim of abuse or neglect or as a status offender may be fingerprinted or photographed with the consent of the juvenile judge. *See* Section 211.151.3 RSMo.

Chapter V – General Procedural Issues and Protocol

Traffic Offenses

Any juvenile who is fifteen and one-half years of age or older and alleged to have committed a traffic offense that does not constitute a felony should be processed in the same manner as an adult traffic offender. **EXCEPT**: A juvenile traffic offender should not be placed in an adult jail cell or holding area.

Any juvenile alleged to have committed a traffic offense that would constitute a felony if committed by an adult or any juvenile under the age of fifteen and one-half years alleged to have committed a traffic offense (felony or misdemeanor) should be referred to the Juvenile Division as outlined in Chapter III – Delinquent Offenses Recommended Practices.

Driving While Under the Influence of Alcohol/Drugs

The requirement of a Miranda warning for juveniles 15 ½ and older does not apply to DWI or other non-felony traffic offenses, because the juvenile is not subject to Juvenile Court jurisdiction. *See* Sweatt v. Dir. Of Rev., 940 S.W.2d 540, 543 (Mo. App. S.D. 1997). However, failure to give a Miranda warning may impair the authorities' ability to use the juvenile's statement in a proceeding charging a delinquent or criminal offense arising from the traffic offense.

Detention for Traffic Offenses

No person under the age of seventeen years may be detained in a jail or adult detention facility. A traffic court judge may request the Juvenile Division to order the commitment of a person under the age of seventeen to a juvenile facility.

Type of Offense	15 and Under	15 ½ and Older
Routine Traffic (Misdemeanor)	**Handle as a juvenile.**	**Handle as an adult.***
All Felonies (Including Traffic)	**Handle as a juvenile, take fingerprints and photographs.**	**Handle as a juvenile, take fingerprints and photographs.**
DWI 1st and 2nd Offenses	**Handle as a juvenile.**	**Handle as an adult.***
Leaving scene of accident (Misdemeanor)	**Handle as a juvenile.**	**Handle as an adult but release on summons to parent or guardian.***
Leaving scene of accident (Felony)	**Handle as a juvenile, take fingerprints and photographs.**	**Handle as a juvenile, take fingerprints and photographs.**

* Section 211.033 RSMo. – No person under the age of seventeen years, except those transferred to the court of general jurisdiction under the provisions of section 211.071, shall be detained in a jail or other detention facility as that term is defined in section 211.151. A traffic court judge may request the juvenile court to order the commitment of a person under the age of seventeen to a juvenile detention facility.

Juvenile Offenses at School

Discipline and behavior problems are the responsibility of school officials and not of law enforcement, unless a crime has been committed. Law enforcement officers need to independently determine whether matters are of a disciplinary or criminal nature.

1) **Removing a Juvenile from School**

   Law enforcement officers should not remove a juvenile from school (take into custody) without probable cause that the juvenile has committed a crime under standards applicable to adult arrests.

   It is the obligation of parents or legal guardians to cause a child between the ages of seven and 16 to regularly attend school. A law enforcement officer may return a truant child to the school or release the truant child to a parent or responsible adult and forward a report to the juvenile officer.

2) **Delinquent Acts in School**

   Delinquent acts in the school setting should be investigated and handled by law enforcement in the same manner as any other criminal investigation. Complete the investigation and forward the report to the Juvenile Office.

Safe Schools Act

The Safe Schools Act appears in various sections of the Missouri Revised Statutes. The information below is from section 160.261 RSMo.

The local board of education's written discipline policy must require school administrators to report acts of violence to teachers and other school district employees with a need to know. The Act defines "need to know" as school personnel who are directly responsible for the student's education or who otherwise interact with the student on a professional basis while acting within the scope of their assigned duties.

The phrase “act of violence” means the exertion of physical force by a student with the intent to do serious physical injury as defined in subdivision (6) of section 565.002 RSMo, to another person while on school property, including a school bus in service on behalf of the district, or while involved in school activities.

The written policy shall, at minimum, require school administrators to report, as soon as reasonably practical, to the appropriate law enforcement agency any of the following felonies, or any act which if committed by an adult would be one of the following felonies committed on school property, including but not limited to actions on any school bus in service on behalf of the district or while involved in school activities:

1. First Degree Murder under section 565.020, RSMo;
2. Second Degree Murder under section 565.021, RSMo;
3. Kidnapping under section 565.110, RSMo;
4. First Degree Assault under section 565.050, RSMo;
5. Forcible Rape under section 566.030, RSMo;
6. Forcible Sodomy under section 566.060, RSMo;
7. Burglary in the First Degree under section 569.160, RSMo;
8. Burglary in the Second Degree under section 569.170, RSMo;
9. Robbery in the First Degree under section 569.020, RSMo;
10. Distribution of Drugs under section 195.211, RSMo;
11. Distribution of Drugs to a Minor under section 195.212, RSMo;
12. Arson in the First Degree under section 569.040, RSMo;
13. Voluntary Manslaughter under section 565.024, RSMo;
14. Involuntary manslaughter under section 565.024, RSMo;
15. Second Degree Assault under section 565.060, RSMo;
16. Sexual Assault under section 566.040, RSMo;
17. Felonious Restraint under section 565.120, RSMo;
18. Property Damage in the First Degree under section 569.100;
19. The possession of a weapon under Chapter 571, RSMo;
20. Child molestation in the first degree pursuant to section 566.067, RSMo;

21. Deviate sexual assault pursuant to section 566.070, RSMo;
22. Sexual misconduct involving a child pursuant to section 566.083, RSMo; or
23. Sexual abuse pursuant to section 566.100, RSMo;

Note: Class A and C misdemeanor assaults in the third degree are not always required to be reported. However, all assaults with physical injuries on school property, are Class D Felonies.

Juvenile Absconders and Requests to Detain

Delinquent Absconders, Out-of-State Runaways, Division of Youth Services Administrative Requests to Detain Out-of-County Runaways/Delinquents – Law enforcement should verify that the juvenile is wanted as an absconder or Out-of-State Runaway with the reporting agency. If the agency requests the juvenile be held pending further court action or pending the release of the juvenile to a parent, guardian, or custodian, the Law Enforcement Officer should ask for written verification of that request and prepare a Probable Cause Statement and Juvenile Referral Report with the request to detain attached.

Children in the custody of the Missouri Children's Division: Any juvenile runaway or absconder in the legal custody of the Missouri Children's Division should be turned over to the physical custody of the Missouri Children's Division as soon as practical. Juveniles in the legal custody of the Missouri Children's Division are not appropriate for placement in a detention facility.

Interstate Compact on Placement of Children

The Compact is a uniform law enacted by all fifty states, the District of Columbia, and the Virgin Islands to assist in the placement of children from one state to another. Provisions of the Interstate Compact on the Placement of Children (ICPC) ensure the same protection and services to children as if they had remained in their home state.

The following chart indicates the information law enforcement may need. The chart is organized by state, and uses the following key:

A – Basic Compact Statute
B – Runaway Amendment
C – Rendition Amendment
D – Out-of-State Confinement Amendment
E – Age of Majority
F – Maximum Age of Probation
G – Maximum Age on Parole/Aftercare

State	A	B	C	D	E	F	G
Alabama	X		X		18	21	21
Alaska	X		X	X	18	19	-
Arizona	X	X	X		18	18	18
Arkansas	X		X		18	21	21
California	X		X	X	18	21	25
Colorado	X	X	X		18	21	21
Connecticut	X		X		16	18	18
Delaware	X		X	X	18	19*	19*
Florida	X	X	X	X	18	19*	19*
Georgia	X		X		17	21	21
Hawaii	X		X	X	18	20	20
Idaho	X	X	X		18	21	21*
Illinois	X		X	X	17	21	21
Indiana	X	X	X	X	18	18	21
Iowa	X		X	X	18	18*	18*
Kansas	X	X	X		18	23	23
Kentucky	X	X	X		18	18	18*
Louisiana	X	X	X		17	21	21
Maine	X		X		18	18*	18*
Maryland	X	X	X	X	18	21	21
Massachusetts	X	X	X		17	16	21
Michigan	X	X	X		17	21	21
Minnesota	X	X	X		18	19	19*
Mississippi	X	X	X		18	18	18
Missouri	X		X		17	21	21
Montana	X		X		18	21	18
Nebraska	X		X	X	19	19	19

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State	A	B	C	D	E	F	G
Nevada	X		X		18	21	21
New Hampshire	X		X		17	18	17
New Jersey	X		X		18	21	*
New Mexico	X		X	X	18	21	21
New York	X	X	X		18	18	18*
North Carolina	X		X	X	18*	17	17*
North Dakota	X		X		18	20	21
Ohio	X		X		18	21	21
Oklahoma	X	X	X		18	21	21
Oregon	X		X		18	23	25
Pennsylvania	X	X	X	X	18	21	-
Rhode Island	X		X		18	21	21
South Carolina	X	X	X		16	18	21
South Dakota	X		X		18	21	21
Tennessee	X		X		18	19	19
Texas	X	X	X		18	18	21
Utah	X		X		18	21	21
Vermont	X	X	X		18	21	-
Virginia	X		X		18	21	21
Washington	X		X		18	21	21
West Virginia	X	X	X		18	21	21
Wisconsin	X		X		18	18	25
Wyoming	X		X		18	21	-
District of Columbia	X	X	X		18	18	21
Guam	X				18	21	-
Virgin Islands	X	X	X		18	18	-

A – Basic Compact Statute
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Custody Disputes

If the juvenile is not subject to the jurisdiction of the Juvenile Division, the Juvenile Officer has no legal authority to advise any party regarding custody disputes or to enforce any order relating to child custody.

Parental Notification

As required by statute, reasonable efforts to notify a juvenile's parent or custodian must be accomplished as soon as practical upon taking the juvenile into custody.

Records

All identifiable information regarding a juvenile in records of a juvenile court proceeding must be kept confidential unless the specific instances set forth in Section 211.321 are met. *See* 37 Op. Att'y Gen. (2003).

Peace officers' records, if any are kept, of children shall be kept separate from records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court. *See* Section 211.321 RSMo.

The Court may order the destruction of all records other than the official court file and may order the official court file and peace officers' records sealed. *See* Section 211.321 RSMo.

Summons and Child Witnesses

Section 211.101 RSMo. grants the Juvenile Officer the authority to request a subpoena for the appearance of "any other person whose presence, in the opinion of the judge, is necessary." *See* also Rule 115.07.

Service of the petition, motions, notices, and other papers of a child 12 years of age or older are to be served on the child personally. Service of the petition, motions, notices, and other papers of a child less than 12 years of age are to be served on the child's custodian. *See* Section 211.101 RSMo. and Rule 115.01 and Rule 115.05.

When serving a child witness, the best practice would be to serve a child 12 years of age or older and the custodian that would need to bring the child to court.

Juvenile Witness or Victim Statements

Juveniles who are witnesses or victims of a crime that is perpetrated by a juvenile or an adult may be interviewed by law enforcement as needed to further the criminal investigation. There is no requirement to have a Juvenile Officer present or to advise the Juvenile Officer that the juvenile is being interviewed or questioned as a witness or victim of an illegal act. It is advisable, however, to notify the juvenile's parent, guardian, or custodian that the juvenile was interviewed by law enforcement as a witness or victim of a criminal act.

Crisis Intervention Resources

ParentLink WarmLine – 1-800-552-8522

ParentLink provides support for parents and professionals through research-based information about parenting, a free loan library of parenting resources, and over-the-phone or email consultation through website: http://extension.missouri.edu/PARENTLINK/wlquestion.htm.

Parent Stress Helpline – 1-800-367-2543

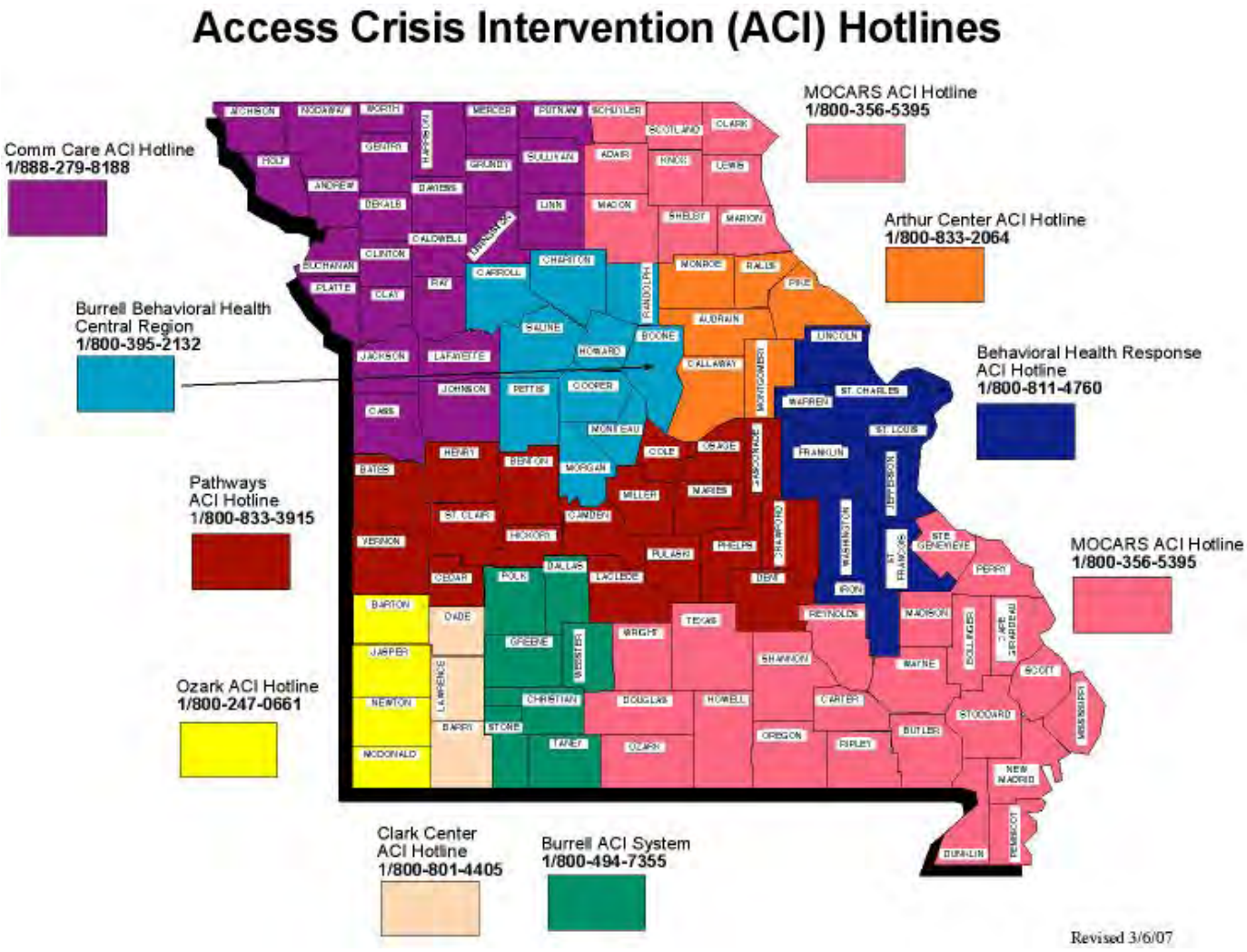
24-hour assistance for parents experiencing a crisis managing their child's behavior.

Suicide Hotline – 1-800-784-2433

School Violence Hotline – 1-866-748-7047

The School Violence Hotline is a centralized reporting and referral mechanism to assist local schools and law enforcement agencies in the identification of actual or potential acts of violence in our schools and intervention to prevent or minimize those acts. The School Violence Hotline is staffed Monday through Friday from 7:00 a.m. to 6:00 p.m. Information is gathered and entered into a centralized database. The information is then communicated --by phone, fax or email-- to the appropriate law enforcement agency and schools. It is then up to the law enforcement agency and school district to decide how the case will be handled.

Access Crisis Intervention – The Access Crisis Intervention (ACI) line is staffed by mental health professionals who can respond to crisis 24 hours per day and 7 days per week. This map shows the regions, providers, and phone numbers for ACI services.



Detention Issues

Weapons should be secured in the appropriate storage area upon entry into the juvenile center.

Law Enforcement Officers may not question a juvenile in the detention facility, except in circumstances where the juvenile is the alleged victim of child abuse or neglect, without the attorney for the juvenile being present to represent the juvenile. This limitation applies upon authorization for detention by the Juvenile Officer or pursuant to an order of the Juvenile Division.

Places of Detention

Juveniles may only be placed in facilities as previously approved by the Court. Law enforcement officers should not make or attempt to influence placement arrangements for juveniles under any circumstances.

Emancipation

"Emancipation" is a legal concept related to when and whether parents are required to support a minor, and the concept of emancipation is not relevant to the determination of whether the juvenile or adult court should hear charges related to either traffic offenses or other crimes committed by the person arrested or charged.

A person who commits a non-felony traffic offense at age 15 ½ or after is subject to proceedings in the adult courts. A person who commits a non-felony traffic offense before age 15 ½ is subject to proceedings in the Juvenile Division.

A person who, at age 17 or after, commits: (1) a felony traffic offense or (2) any other act that would be a crime, is subject to proceedings in the adult courts. A person who, before age 17, commits: (1) a felony traffic offense or (2) any other act that would be a crime, is subject to proceedings in the Juvenile Division.

Different rules may apply to juveniles previously certified to stand trial as adults who have not been found "not guilty" in adult court and questions related thereto should be directed to the appropriate authority.

Immigration Issues

The Juvenile Division does not have legal authority to detain juveniles regarding immigration issues.

The following are contact numbers for Immigration and Customs Enforcement for law enforcement personnel. These numbers are not intended to be disseminated to the general public, but are intended for law enforcement use only.

Kansas City Office:

Investigations: 816-894-8350 ext 221

Detention and Removal: 816-891-0676

St. Louis Office:

Investigations: 314-539-2539

Detention and Removal: 314-539-2132 ext 266

Drug/Alcohol Testing

Juveniles in law enforcement custody should not be subject to drug and alcohol testing except as ordered by the court or as is consistent with statutory requirements. Consent of the parent does not provide proper legal authority to subject a juvenile to drug and alcohol testing by law enforcement. Parents requesting testing of their child should be instructed to make arrangements through their family physician or health care provider.

Searches and Search Warrants

The Circuit Court in which the Juvenile/Family Court is a division can issue search warrants. *See* Sections 542.261; 542.276. Rule 124.01 authorizes the Juvenile Court to issue search warrants.

Search Warrants – Search warrants may be obtained concerning investigations relating to issues of delinquency. The application for the search warrant may be made to the Juvenile Division but may also be made in the Circuit Court.

School Officials – School officials must use "reasonableness" to search lockers, bags, students, etc., at school. Reasonableness is determined by the totality of the circumstances. School officials can be seen as "government agents" when they are working with police or the prosecutor to search the school. If this is the case, then the best practice would be for law enforcement to obtain a search warrant for the search. *See* New Jersey v. T.L.O., 469 U.S. 325 (1985); State v. Baccino, 282 A. 2d 869 (Del. Super. Ct. 1971).

Law Enforcement – Law enforcement should follow the same guidelines they would with an adult when searching the person or property of a juvenile. The Fourth Amendment to the United States Constitution and Article I, Section 15 of the Constitution of Missouri protects an area from search where "the area was one in which there was a reasonable expectation of freedom from government intrusion." *See* J.R.M., In Interest of, 487 S.W. 2d 502 (Mo., 1972) (quoting Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed. 2d 576).

Voice Stress/Polygraph Testing

Juveniles may voluntarily, and with the consent of their parent, guardian, or custodian, submit to a voice stress or polygraph test.

Right to Counsel

A juvenile and the parent, guardian, or custodian of the juvenile have the right to be represented by legal counsel in all stages of the Juvenile Division process.

Tours of Jails/Adult Prisons

According to the sight and sound provision of the Juvenile Justice and Delinquency Prevention Act (JJDP), "accused or adjudicated delinquent offenders, status offenders, and non-offenders cannot have contact with adult inmates, including inmate trustees". The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has amended this requirement to include: juveniles may not be ordered by the Court or Juvenile Officer to participate in tours wherein a juvenile has contact with adult offenders through sight or sound, e.g., Shock Incarceration, Scared Straight, or other type of adult institutional visit.

The amendment reads as follows:

In accordance with OJJDP policy and proposed regulation, the state must assure that no juvenile offender shall enter under public authority, for any amount of time, into a secure setting or secure section of an adult jail, lockup, or correctional facility as a disposition of an offense or as a means of modifying their behavior (e.g., Shock Incarceration or Scared Straight).

The following is a list of questions that were submitted by the Department of Public Safety to the Office of Juvenile Justice and Delinquency prevention, and the responses that were received:

Can juvenile offices coordinate visits to adult institutions if the parents and children are able to choose whether to attend?

This issue was brought to the attention of the Office of Juvenile Justice and Delinquency Prevention. Their position is: doing so conflicts with the intent of this change.

How closely can juvenile officers work with parents, in terms of coordinating tours of adult facilities if the parent escorts their child to the institution?

It was decided that juvenile officers cannot take part in planning or coordinating these visits at any level, regardless of whether the parent would escort their child on these tours.

Can a juvenile who has been adjudicated participate in a tour of a facility if it were to be organized by a school, church, etc…?

Adjudicated juveniles may participate in such tours if it is coordinated by an agency independent of the court. However, any juvenile offenders participating in a shock incarceration program organized by a court or juvenile office at any level will be considered a sight and sound violation under the JJDP Act.

We have a program that is designed to reunite juvenile offenders with their incarcerated parents. Would this be considered a violation?

As long as the juvenile would not be sanctioned for refusing to participate in such a program, OJJDP has deemed this acceptable. Any visit with an incarcerated parent would not be considered a violation

Chapter VI – History and Background of Juvenile Justice and Delinquency Prevention Act

In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act in an attempt to help state and local governments address the problem of juvenile delinquency.

Its purpose was to protect juveniles from physical and psychological harm, to emphasize the need for community-based treatment for juvenile offenders, to help state and local governments prevent and control juvenile delinquency and to improve the juvenile justice system. The Act promoted the development of effective programs to prevent delinquency, divert juveniles from the juvenile justice system, provide alternatives to institutionalization, etc. The Act also created requirements that states must adhere to as conditions for receiving federal juvenile justice funding.

As a condition of receiving this Federal funding, Missouri is required to collect information on juveniles held securely, and to conduct physical on-site visits to both secure and non-secure facilities including: law enforcement facilities, juvenile detention facilities, Division of Youth Service facilities, and the Missouri Department of Corrections. The Department of Public Safety performs the required monitoring of compliance with the Act's requirements, and provides training and technical assistance to law enforcement, courts and other youth serving organizations.

Federal Core Requirements

Section 223(a)(12) – The Deinstitutionalization of Status Offenders

This requirement provides that juvenile status offenders and non-offenders (abused or neglected children) may not be securely detained in an adult facility. Under special conditions, an exception allows juvenile status offenders to be held in a designated juvenile detention facility, but with certain restrictions.

Adult jails and lockups cannot hold status offenders, non-offenders, alien juveniles, or civil-type juvenile offenders in a secure manner (in a cell, on a cuffing ring, in a locked room or set of rooms) at any time. These juveniles may be detained in a non-secure area (unlocked office area, unlocked lobby, or unlocked interview room) of an adult jail or lockup for processing while awaiting transportation to a non-secure shelter care facility or a juvenile detention facility or while waiting release to a parent or guardian.

Note that under the federal definition, possession of alcohol and tobacco, and curfew violations are considered status offenses. Under special conditions, an exception allows juvenile status offenders and non-offenders to be held in a court designated juvenile detention facility, but with certain restrictions (Federal Regulations set forth in various editions of the Federal Register).

Status offenders may be securely detained in a juvenile detention facility for up to 24-hours, exclusive of weekends or legal holidays, prior to an initial court appearance, and for an additional 24-hours, exclusive of weekends or legal holidays, immediately following an initial court appearance. (***Note**:* state law does not permit this additional 24-hour post-hearing holding period for status offenders unless a judge has issued a valid court order.) Unused hours from any pre-hearing placement may not be added to the post-hearing 24-hour time limit.

Section 223 (a)(13) – Sight and Sound Separation

This requirement provides that if juveniles are temporarily detained in a facility that is also used to hold adult offenders (either accused or adjudicated), sight and sound separation must be maintained between the juveniles and adult offenders, including trustees.

Section 223 (a)(14) – Jail Removal

This requirement provides that no juvenile may be detained or confined in an adult jail or lockup, unless transferred to adult court for criminal prosecution. An exception does allow for a juvenile accused of a delinquent offense (a law violation as opposed to a status offense) to be securely held for up to six hours for processing purposes. Sight and sound separation must still be maintained.

Section 223(a)(23) – Disproportionate Minority Confinement

To meet the DMC core requirement, states are required to gather data, conduct analysis and problem identification, assessments, program development, and systems improvement initiatives in an effort to reduce the number of minority youth in secure facilities where the proportion of minority youth in confinement exceeds the proportion such groups represent in the general population.

Common Questions about Detaining Juveniles According to the Juvenile Justice and Delinquency Prevention Act

What are some examples of "secure confinement"?

A juvenile placed in a locked room or on a secure device such as a in a cell, in a locked interview room, a locked booking room or locked office, or held on a secure cuffing ring, cuffing bench, or cuffing rail.

How can status offenders be held if they cannot be securely detained?

Status offenders may be detained in a non-secure area of a police or sheriff's department for processing, awaiting transportation, or release to a parent or guardian.

What types of areas are considered "non-secure"?

An unlocked lobby, an unlocked office, an unlocked interrogation room, or other unlocked multi-purpose areas not intended for residential use.

Does the Deinstitutionalization of Status Offenders requirement mean that status offenders can't be handcuffed?

Status offenders *CAN* be handcuffed to a non-stationary object (chair, table, or themselves). This includes leg shackles, as long as it's to a non-stationary object.

Are there any restrictions on transporting a juvenile in a patrol car?

The JJDP Act applies to detention facilities and secure correctional facilities; therefore a juvenile placed in a patrol car would be in a non-secure custody status. Both status offenders and delinquent offenders may be handcuffed for officer safety and transported in the back of a patrol car.

What about physical restriction through staff? (i.e. staff secure)
A juvenile placed in a non-secure area, but prevented from leaving because of staff restricting access to exits is considered to be in non-secure status.

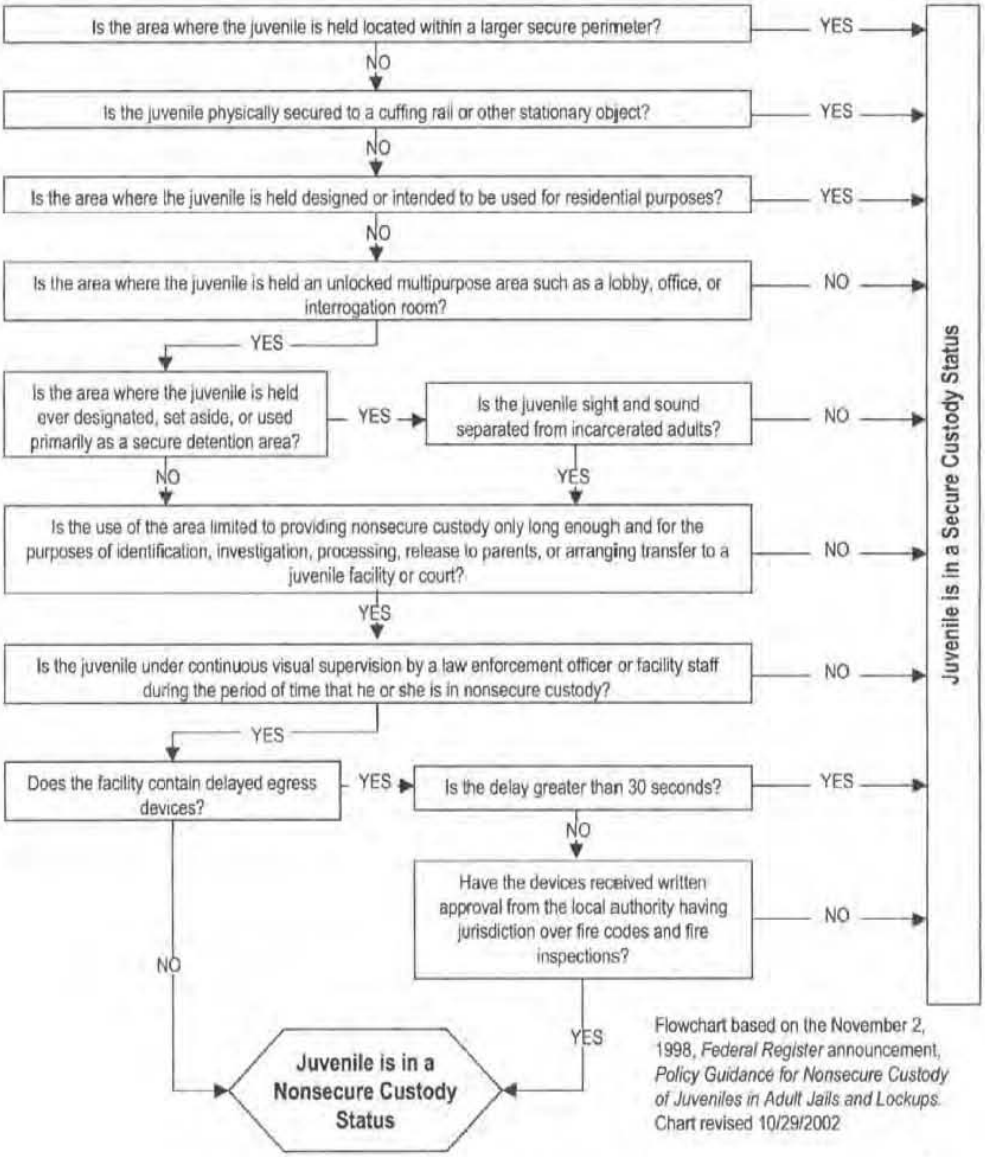
What happens if a status offender becomes combative?
Do they still have to be held in non-secure custody?
If a status offender commits a law violation while in custody, he or she may be charged with a law violation, and can be placed in secure custody pursuant to that law violation (i.e. assault, vandalism, etc)

How can sight and sound separation be achieved?
Sight and sound separation can be achieved through architectural separation or by time-phasing the use of an area to prohibit simultaneous use by juveniles and adults.

Does sight and sound separation apply in the booking area?
When a secure booking area is all that is available; if the juvenile is under continuous supervision, and remains in the booking area long enough to be photographed and fingerprinted, sight and sound separation would not apply.

Do these requirements include transferred, certified, or waived youth?
A juvenile under the jurisdiction of the criminal (adult) court does not have to be separated from adult criminal offenders. This is because a transferred, waived, or certified juvenile is not considered "delinquent".

Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup



Flowchart based on the November 2, 1998, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups.* Chart revised 10/29/2002

Guidance Manual for Monitoring Facilities Under the JJDP Act 8

Monthly Log of Juveniles Taken Into Custody

Month: _____

DEPARTMENT _____

CASE NUMBER	Juvenile ID/Initials	DOB	Race/ Sex	Most Serious Offense Alleged	Arrived Time/Date	Released Time/Date	Held in Cell/Cuffing Ring	Disposition	Arresting Officer

Key

Race Code:
W = White
B = Black
H = Hispanic
I = Amer. Indian
A = Asian
O = Other

Disposition Code:
A = Release to parent or guardian
B = Release to Juv. Officer
C = Transfer to Detention
D = Transfer to Hospital
E = Other (Explain)

*Status offenses include the following Runnaway, Truancy, Incorigible, Beyond Parental Control, Behaviors Injurious to Self or Others, and Minor in Possession of Alcohol or Tobacco

NOTE Minor in Possession of Alcohol or Tobacco are classified as status offenses per Federal regulation